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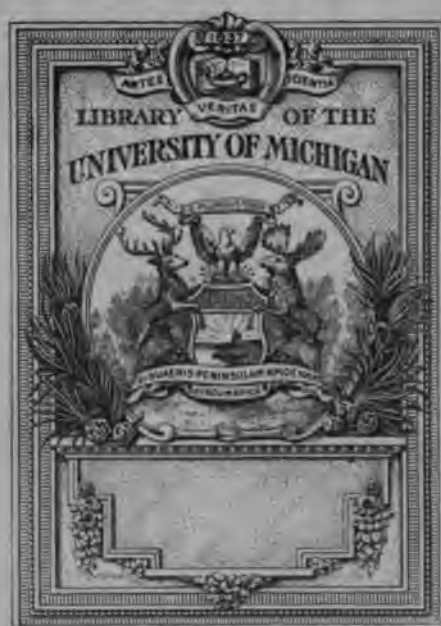
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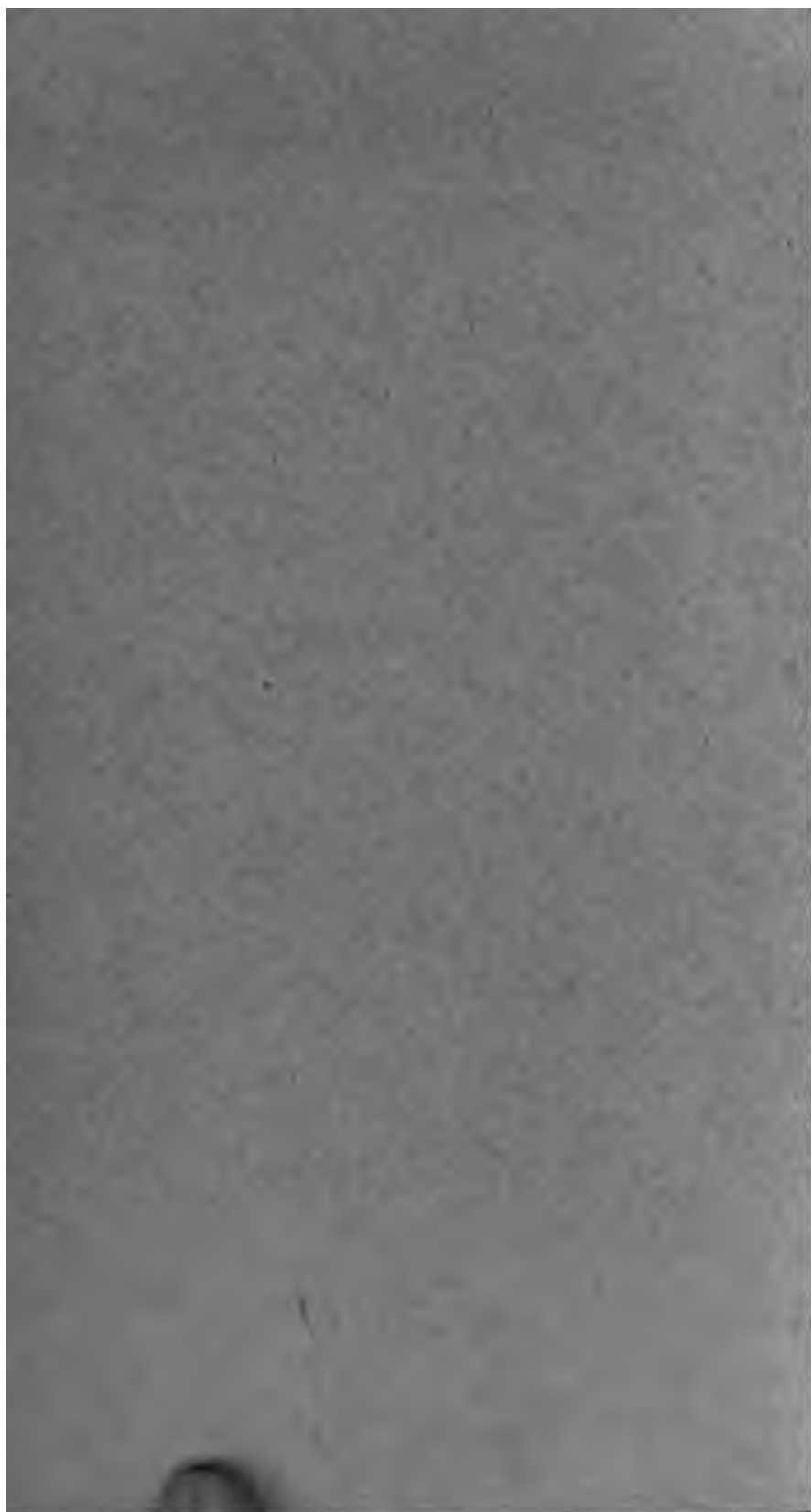
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**THE ORIGIN OF THE SYSTEM OF LAND GRANTS FOR
EDUCATION**

BY

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THE ORIGIN OF THE SYSTEM OF LAND GRANTS FOR EDUCATION.¹

INTRODUCTION.

When the Continental Congress, shortly before the adoption of the Constitution, set in operation its plan of colonizing the public domain, it followed the policy of making grants of wild lands for the support of schools. An ordinance passed in 1785 provided for the survey and sale of seven ranges of townships in the Ohio country, and in each township section number sixteen was to be reserved for the support of schools.

Two years later the same congress, as one of its last and certainly one of its most notable acts, established the Ordinance of 1787, for the government of the Ohio territory. It contained the famous declaration, that, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." The federal land grants for higher and common education made to the Ohio Company are contemporary interpretations of this declaration.

The policy thus announced and defined by the old congress was adopted and continued by its federal successor; and under it state after state has been erected in the expanding national domain, each endowed with a vast public property dedicated to the support of common schools. The influence of such endowments on the development of the state systems of education cannot well be over estimated. They have formed centers of state interest

¹This paper was submitted for the degree of M. L. in the University of Wisconsin, 1899.

and activity along educational lines. The land grant guaranteed a school fund, which brought education necessarily under state control. This centralization in turn, led to a prompt and vigorous development of school systems, even in states where the early environment was unfavorable to educational progress. These grants have not always been wisely applied;² it would be strange if they had been. But the general result, it may safely be asserted, has been to impart a vastly greater efficiency to the educational effort of the past century.³

This is a complete justification of the high praise always bestowed on the framers of the Ordinance of 1785 for their wisdom in incorporating in it the school reservation principle, and on the framers of the Ordinance of 1787 for their declaration. It justifies also the careful investigations that have been made in order to determine the exact means by which the educational clause was engrafted upon the ordinances of 1785 and 1787.⁴

But in regard to a policy which has been so fruitful in results it is desirable to know more than this. We wish to know, for example, from what source the statesmen of this period derived the *idea* of land grants for education; whether it came to them in the form of a "happy suggestion," as seems so often to be taken for granted, or whether it was the result of colonial experience. If the latter, just what and how far reaching were the customs which involved the principle of land grants? Lastly, assuming that the idea was involved in well defined local customs, how was it brought to the attention of the national legislators in a way to induce them to embody it in the ordinances?

These are the problems of the present paper. The investigation quickly revealed the fact that the idea was not a new one in

²On "The History and Management of Land Grants for Education in the Northwest Territory," see Knight, G. W., *Papers of the American Historical Association*, volume 1 (1885).

³When we reflect that without the stimulus of the land grants state control of education would probably, in some cases, have been long deferred, and that then the local units would have been left to follow their own inclinations in the matter, we begin to realize the importance of these grants incorporated in the acts establishing new states. Observation and history prove that in a large number of communities the state law has often been the sole means of keeping the public schools alive.

⁴This task has been successfully performed by Dr. Knight in the monograph cited above.

1787, but that it had already been in operation in one section of the country for many years. It was also found that these local customs could be traced back through somewhat varying forms, to the earliest period of American colonization in the seventeenth century, and even to English practise in the sixteenth century.

These facts determine the mode of treatment to be followed, and fix in a general way the limits of the subject. The attempt will be made to trace the evolution of the land grant policy, beginning with the idea as brought in germ from England to the colonies. It will be shown how the idea of permanent school endowments, as understood by the English colonists, was affected by the two forces, *public care of education*, and *free land*; how a definite land grant policy grew up in several of the colonies under the stimulus of these forces; and finally, how the local policy became the policy of the entire nation.

In endeavoring to localize the land grant custom it was seen that examples of its earliest form might be found in all the colonies, but since, for special reasons, the growth into the later and significant forms took place only in a part of them, the illustrations are all selected from these colonies.

The materials for this study have been drawn almost entirely from original sources. Only on the first and last sections has any considerable help been derived from work done along these lines by others.⁵

⁵ The study of English schools at the Reformation, by Mr. Arthur F. Leach, has afforded much light on English educational conditions in the sixteenth century; while Mr. Knight's monograph has greatly shortened the labor of tracing out the way in which the land grant policy was nationalized.

CHAPTER I.

ENGLISH PRECEDENTS FOR LAND GRANTS FOR EDUCATION.

There is a very general impression that education in England during the middle ages was a matter of little account; and that it was only with the opening of the modern era that progress began. Modern investigation, however, is forcing us to greatly modify our earlier ideas about educational conditions in mediæval England. A recent writer⁶ has shown that during the later middle ages England was fairly well supplied with schools of the ordinary kinds, and that, in proportion to population, she was probably better supplied with Grammar schools than she has ever been since that time. These schools were generally connected with church properties of various kinds, and were supported from the incomes of such properties. Some pertained to cathedrals, some to monasteries, some to collegiate churches, and a very large proportion to the numerous chantries.

With the destruction of the monasteries (and other religious foundations) by Henry VIII and Edward VI, the schools depending upon them lost their support and naturally perished also. Therefore the reign of Edward VI was from one point of view a dark age for education.⁷ On all hands the schools to which the people were accustomed had fallen. It is true Edward restored a number of them, but many were utterly lost; so that, as late as 1562, the speaker of the House of Commons complained to Queen Elizabeth that "at least a hundred [grammar schools] were wanting in England which before [the suppression of the monasteries] had been."⁸

Perhaps it is fortunate that the disaster came just when it did, for by that time the influence of the new learning, working

⁶Leach, A. F., *English Schools at the Reformation*.

⁷*Ibid.* Introduction; see also Gasquet, *Henry VIII. and the English Monasteries* II, 518-520.

⁸Trail, *Social England*, III, 228.

through such men as Erasmus, Colet and More, was beginning to quicken the intellectual life of the English people. They were therefore in some degree able to appreciate the loss of their accustomed schools, and were prepared to make sacrifices in order to replace them. Thus in the reaction which followed the suppression of the monasteries, we have the beginnings of a new educational movement;—a movement⁹ stimulated by the need created by the ruthlessness of kings, but endued with the spirit of the new age. Had the schools been destroyed a century and a half earlier it is possible that little effort would have been made to retrieve the loss; now, however, the English people became aroused on the subject of education, and began that activity in building and endowing schools which was still noticeable in the next century, and with which the colonizers of America were familiar.

In some cases the inhabitants of places in which schools formerly existing had been destroyed by act of the king, petitioned for their reestablishment. Such petitions were often favorably acted upon, the schools so established being endowed with portions of the sequestered church lands. The famous grammar school at Shrewsbury was founded in this manner. At that place, we are told, Latin had been taught in the monasteries until their suppression. In 1551 "the total want of some public institution for the education of youth in this town was represented to the King—and a considerable portion of the lands of the two dissolved collegiate churches of St. Mary and St. Chad were solidited for the maintenance of a Free Grammar school." The king acceded to the petition and established at Shrewsbury "The Royal Free Grammar School of King Edward VI."¹⁰

⁹ *Social England*, III, 29 et seq.

¹⁰ *Ancient and Present State of Shrewsbury* 346, 350. Compare *Social England*, III, 29.

Another excellent example comes from Kent. At Eversham there had been a grammar school endowed by an individual but placed under the control of the monastery. Henry VIII. destroyed the monastery and the school fell. The people at once petitioned for its restoration, but without success. A number of years later Queen Elizabeth, on one of her progresses, rested in the town two nights, and the people seized this favorable occasion to plead for the reestablishment of their school. This time they did not plead in vain, for the Queen endowed the new grammar school with a portion of the lands that had

But the restorations made by the monarchs did not compensate for the schools destroyed, and private individuals of wealth and public spirit came forward to supply the deficiency. The parliamentary statutes for the period and the annals of English towns, tell a story of private generosity in the founding of schools which forms a bright page in English history.¹¹ The statutes name as founders, "knights," "esquires," "clerks," plain men without titles of any kind, and one who is described as a "citizen and grocer of London."

The histories of towns and counties present numerous additional illustrations. Thus Tiverton¹² had a free grammar school endowed by a wealthy clothier in 1604; Uttoxeter¹³ had one founded and endowed by a priest in 1558; clergymen also endowed the schools at Skipton¹⁴ and Lincoln.¹⁵ In Alford¹⁶ the grammar school was richly endowed by a merchant, in 1565, and in Spaulding¹⁷ by "John Blanche," in 1558. Horncastle had a grammar school "founded and endowed by Lord Clinton and Saye, Lord High Admiral of England, under the authority of letters patent 1652."¹⁸

belonged to the old one. (Hastad, *History of Kent* I, 714.) For other illustrations, see the *History of the County of Lincoln* (2 vols. London and Lincoln, 1834), I, 262, 307.

¹¹ The following, taken from Ruffhead, *Statutes at Large*, II and III, will illustrate the movement from the parliamentary side:

An act for the confirmation of a free school erected in the town of Stamford, and for the more sure enjoying of the lands given by William Ratcliffe for the maintenance of a schoolmaster there. (2 & 3 Edw. VI., 20, 21.)

An act for the erection of a free school in the town of Pocklington in the County of York. (5 & 6 Edw. VI., 8.)

An act for the better and further assurance of lands given to the maintenance of the free Grammar school in Tunbridge in the County of Kent. (14 Eliz., 2.)

An act for the perfection of assurance of certain lands given for the maintenance of a free Grammar School in the city of Coventry. (23 Eliz., 4.)

An act for the foundation of a hospital, a grammar school and maintenance of a preacher, in the town of Thetford forever, according to the last will and testament of Richard Fulmarston, Knight. (4 James I.)

An act to confirm and enable the erection of an hospital, a free grammar school and sundry other godly and charitable acts and uses, done and intended to be done and performed by Thomas Sutton, Esquire. (4 James I., 21.)

Other cases occur in the reigns of James I., Charles I., and Charles II.

¹² Harding, *History of Tiverton*, I, 43.

¹³ Redfern, *History of Uttoxeter*, p. 303.

¹⁴ Dawson, *History of Skipton*, p. 333.

¹⁵ *History of Lincoln*, II, 207.

¹⁶ *Ibid.*, p. 242.

¹⁷ *Ibid.*, I, 291.

¹⁸ *Ibid.*, II, 191.

CHAPTER II.

EARLY AMERICAN LAND GRANTS FOR EDUCATION.

In the light of English practise respecting school support, it is not surprising to find the early American colonists founding "free schools," or "free grammar schools," and endowing them with lands. The custom was followed to some extent in all of the colonies, but in certain ones, namely Massachusetts, Connecticut and New Hampshire,¹⁹ it developed steadily in the direction of a public land grant system.

We have seen that in England a very common form of school endowment was through a grant of land made by an individual. Such cases also appeared in the colonies. Capt. John Mason,²⁰ proprietor of New Hampshire, died in 1636. In his will, dated November 26 appears a provision for devoting one thousand acres of land in his colony to "the maintenance of a free grammar school for the education of youth."

In 1671 Mr. Thomas Bell, dying in England, bequeathed to Mr. John Eliot in trust for the use of a school in Roxbury, Massachusetts, all his lands and tenements situated there. The property was leased, and at once produced an income sufficient for schooling thirty boys. Sixty years later a part of the land was sold for a sum, the income of which supported a school of one hundred and thirty boys, with six teachers, all receiving the highest salaries paid for grammar school work.²¹

The cases noticed above illustrate the very general and well known custom of private endowment. It was not at all remarkable, in view of the educational activity of that and several preceding generations of Englishmen. But, alongside of these private grants, we have from the earliest time a class of public

¹⁹The same was true of Vermont, which became a separate state.

²⁰Capt. John Mason, *Prince Society Publications*, p. 404.

²¹*Memorial History of Boston*, IV, 239-240.

grants of a very special significance because of the peculiar development given them; namely, those made by towns or town proprietaries.

The early records of the town of Boston contain an illustration of this custom: "10th. day of ye 11th. month 1641 It is ordered that Deare Iland shall be improved for the maintenance of a Free School for the towne and such other occasions as ye select townsmen for the time shall think meet, the said school being sufficiently provided for."²² The town of Braintree²³ was incorporated in May, 1640. In July of the same year the corporation secured, by purchase, the famous tract of about one hundred and fifty-eight acres known as the "Coddington School Lands." They became so valuable that in 1739 the annual rental was £142, and the lands, for many years prior to that time, had been a great source of benefit to the school.

The school history of the town of Dorchester is extremely interesting from several points of view; but especially so because of the early use of lands for school support. In 1635 the general court of the colony granted to the town "Thomson's Iland—to enjoy to them and their heirs which shall inhabit there forever, paying the yearly rent of twelve pence to the treasury for ye time beinge." Four years later (1639) the town appropriated Thomson's Island for the use of the school, and a rent of twenty pounds per annum, collected from those occupying lands there, was paid to the school master.²⁴

New arrangements were made in 1641, whereby the revenues seem to have been increased. Elaborate rules were at this time made for the management of the school. A body of wardens was appointed to supervise it, and "to order and dispose of all things that concern the school [in ways] most conducive for the glory of God and the bringing up of the children of the town in religion, learning, and civilitie."

The school now entered on a very flourishing era, and its support seemed permanently assured, when the general court re-

²² *Ibid.*, pp. 238-239.

²³ *Ibid.*, p. 237. See also *Magazine of New England History*, III, 228.

²⁴ *History of Dorchester*, pp. 160-163, 420-424.

voked its former gift to the town and conferred Thomson's Island upon a descendant of the original occupant. The townsmen immediately presented a petition asking the court to grant them some other island in place of the one taken away; "towards the maintenance of a free school," which, they say significantly, "is like to faile" without such help. The court agreed that "when the town should present that which was fitt to be given it should be conferred upon them."²⁵

Perhaps there was no "fitt" island left to be granted. At any rate the Dorchester people brought suit for the recovery of Thomson's Island, and failed.²⁶ Nine years later (1659) the townsmen again petitioned for a renewal of the grant of Thomson's Island, and in case this could not be restored them, they desired the court to grant them one thousand acres of land in some convenient place, "for the end aforesaid, namely the maintenance of Or dying school." These lands were finally laid out in the western part of the state. They brought in very little revenue and in 1734 were sold for £400.

But there were other school lands in Dorchester. In 1657 the inhabitants voted to set aside one thousand acres of their own land for school purposes. This produced a small income during the years following. As new towns were erected within the earlier boundaries of Dorchester portions of this school land were either set off to them, or they were allowed to participate in the benefits of the income derived from them. Portions of the land were sold at various times and a small school fund established. There is evidence that at least three towns, all within the early bounds of Dorchester, participated in this fund.²⁸

²⁵ *Ibid.*, pp. 163-164.

²⁶ *Records of Massachusetts Bay*, III, 130.

²⁷ *History of Dorchester* pp. 433-434. The petitioners recite the circumstances of their possession of the island for several years, and speak of the benefits derived from it. Then they say: "But the said Island hath been taken from us and settled on others, to the almost if not total overthrow of Or free school wch was so hopeful for posteritie both our own and our neighbors also who had or might have received benefit thereby."

²⁸ *Ibid.*, pp. 432 et seq.

About the time that the school lands were to be laid out, just before the close of the seventeenth century, the records state that "Some of our friends of Milton [one of the towns set off from Dorchester] requested the town to grant them

The town of Dedham was begun in the year 1636. At a general meeting of the year 1644, "The said inhabitants, taking into consideration the great necessitie of providing some means for the education of the youth in Or said Towne, did with an unanimous consent declare by voate their willingness to promote that worke promising to put their lands to provide maintenance for a free Schoole in our said Towne. And further did resolve and consent, testifying it by voate, to rayse the some of Twenty pounds pr annum: towards the maintenance of a schoole Mr. to keep a free schoole in our said Towne. And also did resolve and consent to betrust the said 20£ pr annum *and certain lands in our town formerly set apart for publique use* into the hands of feoffees to be presently chosen by themselves to employ the said 20£ and the land aforesaid to be improved for the use of the said schoole: that as the profits shall arise from ye said land every man may be proportionately abated of his some of the said 20£ aforesaid freely to be given to the use aforesaid." The feoffees were chosen at the same meeting.²⁰ At a later meeting of the same year there was "granted to ye feoffees for ye schoole in Dedham for the use of the said schoole a percell of the training ground"²¹ for the period of six years.

It is true the intentions of the town fathers of Dedham to endow the school from the town lands were defeated by their descendants; but this need not surprise us. A survey of the educational history of a considerable number of New England towns seems to show that even in the earlier period there was a great deal of indifference, while, as many of the local historians suggest, the second and third generations exhibited lower educational ideals than did the first. Dedham is a good example but there are others.

200 acres for the same purpose. The town did seem to favor the matter yet notwithstanding did defer the affirmative grant thereof until our own school lands above mentioned shall be first laid out, and until the town of Milton have a school appearing to need the same." (*Ibid.*, p. 269.)

In 1707 the town granted "150 acres to Milton provided a grammar school was kept there for fifteen years." (*Ibid.*, p. 282.)

²⁰ *Dedham Records, Town and Selectmen*, I, 105.

²¹ *Ibid.*, p. 108. Other lands were voted for the use of the church in Dedham. (*Ibid.*, p. 166.)

The town of Woburn was begun as early as 1640 and was incorporated in 1642. Yet, up to 1673 the town records seem to contain no evidence of the existence of a school there. To be sure this does not prove that there was no school in the town, but it does show a lack of public interest in education. When we couple this negative evidence with the positive evidence available we have a fairly strong case. In 1673 two "dames" were paid ten shillings (between them) for a year's teaching. In 1674 the town, "Agreed with Jonathon Thomson to tech bigger children, and Allen Counar's wife to tech lesser children." They were allowed one pound between them for the work. Similar entries were made for each year till 1680.

By 1685 the town had over one hundred families, which, under colonial law, rendered it responsible for a grammar school. Mr. Samuel Carter, son of the minister, was appointed to keep such a school and was allowed the munificent sum of five pounds for the work. But even at that rate he was overpaid, for it fell out that there were no pupils to attend the school. The townsmen were not disposed to pay good money for nothing, and yet they were anxious to escape the ten pound fine for neglect to keep a grammar school. So the selectmen re-engaged Mr. Carter, agreeing to pay him twenty shillings, and if any scholars should attend, five pounds. There were no scholars. The same year a dame was appointed to teach the small children, at a salary of ten shillings and this is spoken of as the usual pay.³¹

Yet, in spite of frequent failure; in spite of local indifference; there were forces at work tending not only to check a threatened or actual decadence, but slowly to build up a strong educational sentiment among all classes of the people, and to place the interests of the school upon a firmer foundation. Among these beneficent forces we have to reckon the public interest in the lands early set apart for school purposes in a large number of New England towns. In many, perhaps in most cases, these lands when granted were of little value. But

³¹ Sewall, *History of Woburn*, pp. 51-56. He quotes the town records and gives volume and page references.

their value steadily increased with the general development of the country, and with this increase the popular interest in them kept pace. So, while in the beginning there was probably no thought of obtaining a considerable revenue from the school lands, it came to be seen that in time they might form the adequate support of the town schools. Hence an increasing educational interest centering in such property.

The writer knows of no case which so clearly reveals the evolution of what might be called a "school lands consciousness" among the people, as does the history of the school lot in Springfield, Massachusetts. It will therefore be given with some detail in the succeeding section.

In 1636 William Pynchon, one of the members of the Massachusetts Bay Company, left Roxbury to seek a good location for the Indian trade on the Connecticut River. He pitched upon the land at the junction of the Agawaam, and bought a tract for a town lying on both sides of the "Great River."³² Trade was begun, and was carried on successfully for many years, first by William Pynchon and afterwards by his son. Those who came to cast in their lot with the original adventurers received land and the broad meadows along the river were opened up to cultivation. As new settlers came to the town it was the custom to grant them lands for house lots, for cultivation, meadow and pasturage.

It would appear that Mr. Moxon, the first minister, on settling there in 1638, received such a grant in exactly the same way as other settlers received theirs.³³ He remained until 1652 and on his departure the town purchased his entire property, consisting of the land granted to him in 1638, with the house and other improvements made upon it, and set it aside *for the support of the minister in Springfield forever*.³⁴

We will next notice the significant transaction which introduces the subject of school lands. March 13th., 1654. "Whereas there hath been a p'sell of land over ye great river at

³² The price paid was "18 fathoms of wampum, 18 coats, 18 hatchets, 18 hoes, and 18 knives."

³³ Burt, *The First Century of Springfield*. Introduction.

³⁴ *Ibid.*, p. 222.

ye lower end of Chickuppi plaine, reserved for ye Towne's use, & yet notwithstanding some of ye land hath been disposed off to p'ticular prsons so yt there is now but about Thirty acres there-off left; some prsons desiring yt ye said thirty acres may also be disposed off & distributed to several prsons: The Towne took it into consideration whether to yield thereunto, & ye major part of ye Towne, for several reasons, doe resolve not to dispose of ye said Thirty acres of land to any pticular prson or prsons as their ppriety but doe here by order yt ye aforesd Thirty acres of land at ye lower end of Chickuppi plaine over ye great river shall be reserved in ye Towne's hands, as ye Towne's land, for ye Towne's use, *either for ye helping to maintain a school master* or ruling Elder or to help beare any other Towne charges accordinge as it shall here after be concluded on, But not to be disposed off fro. ye Town's ppriety."³⁵

At the above mentioned meeting it was further "ordered yt ye select townsmen shall have liberty to let out ye sd land for yeare or yeares to bring in some yearly rent if they can find any to take it." The land was leased (apparently for the first time) in 1659, for the space of nine years.

By this time the reservation is spoken of as, "The 35 or 40 acres of Towne land in Chickuppi plaine," a strip having been added to it some years previous. The annual rent is accounted for on the credit side of the town's ledger, but there is nothing to prove that this money, (or produce, for it was paid in kind), went to the support of the school master prior to the year 1678. At a meeting of that year it was "voted and concluded that Mr. Daniel Denton shall have the profits of the Town's lands at Chickuppi and ten pound p annum, besides the allowance that the school master according to Town order or agreement is to have of al such as send their children or servants."³⁶

In the town accounts of the same year, 1678, on the credit side we read, "By ye Town land at Chickuppi, 6£-10s. ; and on the debit side, "To ye School Mr 6£ fro. ye Town and 6£-10s. fro

³⁵ *Ibid.*, I, 213. [†] The Italics are mine.

³⁶ *Ibid.*, II, 140.

Chickuppi."³⁷ Hence it is certain that the land was by this time at least occasionally used as a support of the school.

Let us now return to the ministry reservation. In 1655 Mr. Thompson came to Springfield as pastor, and at a meeting held November 15th of that year it was voted to give him possession of the land and house purchased of Mr. Moxon and set aside for the ministry. But it was definitely stated that, "When he shall cease to be our preaching minister, then ye said housing and lands to return to ye towne's hands."³⁸

Mr. Thompson left the town within a year and was followed by Mr. Hooker who remained only a few months. Then, after an interval, in 1660, came the Rev. Pelatiah Glover who stayed until his death in 1692. He, of course, was put in possession of the ministry lands; but he was not satisfied with the mere temporary enjoyment of the property, and requested the town to give him an absolute title in fee simple.

He was influential enough to secure a vote to this effect in 1665. "All present consenting thereto."³⁹ This was a radical departure from both the spirit and the letter of the vote of 1655, and bore fruit later. In 1677, after the burning of Springfield by the Indians, a new house was built for the minister, and when a vote passed "To give Or Reverend Teacher, Mr. Glover this house—upon ye like terms as ye former house and lands were given," the action of the majority was dissented from by twenty-two men, whose names were entered; they declaring in favor of "ye former vote yt ye house be for ye ministry, disallowing of any alteration of ye former vote."⁴⁰

The above mentioned vote was taken in July; in August of the same year, at a special meeting called to consider this matter it was decided that the town had no right to grant the lands to Mr. Glover, they having been set aside for the support of the ministry forever.

They therefore concluded to raise Mr. Glover's salary and resume the land "to its first and primitive use." It was not to be "accounted or reckoned Mr. Glover's propriety otherwise

³⁷ *Ibid.*, I, 422.

³⁸ *Ibid.*, I, 243.

³⁹ *Ibid.*, II, 61.

⁴⁰ *Ibid.*, II, 132.

than for use while he [should] continue [their] minister."⁴¹ Mr. Glover, however, seems not to have yielded gracefully to this conclusion and appealed to the general court to arbitrate the matter.⁴¹ The next year the matter was up again, and now a startling solution was found for the difficulty. It was voted that, in view of all the circumstances (including the declaration of the general court that the town ought to give Mr. Glover full compensation) to allow Mr. Glover to keep the ministry lands as his own and to set apart the Chickuppi lands, (with some nine acres added thereto), as ministry lands. The "votes for this exchange were 27, and the dissenters were 23; who though they dissented from confirming the Town's gift to Or Rev Teacher, yet they consented to give him a full compensation for the land first set apart for the ministry."⁴²

Thus the ministry lands are first voted away to an individual and then, to satisfy those who object to this proceeding the school lands are set apart for the ministry. But the end is not yet, as the division on the last vote would indicate. On the death of the Rev. Pelatiah Glover his son, Pelatiah, inherited his rights to the land in question. But the townsmen now showed a desire to secure those lands to their first use. Therefore they held a meeting, "in order to the discoursing and agreeing with Mr. Glover about the house and land wch ye Town granted his father which belongs to the ministry."⁴³

Thereafter, until 1695, a number of votes were taken on this matter, the Chickuppi lands figuring very prominently as a part of the compensation which it was proposed to give Mr. Glover. But finally it was decided that these lands could not be granted to an individual and a money compensation was given instead. The school lands party had gained a complete victory, which they were not slow to secure by passing a clear and definite resolution:

"That the ancient appropriation of Chickuppi land on

⁴¹ *Ibid.*, p. 133.

⁴² *Ibid.*, p. 156. We shall probably not be far wrong in assuming that the dissenters from the above vote represented a party which desired to retain the Chickuppi lands for school purposes.

⁴³ *Ibid.*, p. 205. This was in 1692. The italics are mine.

the west side of the river bee to the maintenance of a schoole in the Towne of Springfield. Also voted that the six acres of meadow, bee it more or less, on the east side of the river lying between the meadow of Col. John Pynchon on the southeast, and the meadow of Edward Stebbins on the northwest side bee appropriated to the same use, and is now granted unto that use, vizt, towards the maintenance of a school in Springfield forever."⁴⁴

Thus, happily, this grant, after passing through many vicissitudes, by reason of the development of a public sentiment favorable to a steady support of schools, came at last to be exclusively devoted to that purpose.⁴⁵

⁴⁴*Ibid.*, 344.

⁴⁵In the notes to *Acts and Resolves of Massachusetts Bay*, VIII, Resolves, etc., 1703-1707, Appendix III, pp. 588-593, is a chapter on the school history of Springfield, taken from Archives, LVIII, p. 245. It is there stated, "that the profits of the lands appropriated in 1653 (?) to the maintenance of a school seemed not to have been applied to that purpose before the year 1696. Possibly no income may have accrued from them. However that may be, the following vote by the inhabitants appears to have been the first attempt to realize and apply an income from these lands and at the same time to set apart other lands for the same purpose." Here follows the vote just given above. There is a misapprehension here, for it has been shown that there was an income from these lands long before 1696, and also that this income was at least once voted to the schoolmaster, and at least once paid to him. The writer evidently overlooked the series of transactions resulting directly in the vote given in 1696.

It is significant that the question of preserving to the town its school lands should have been so closely connected with the question of preserving the ministry lands. There is a clearly apparent development of a sentiment favorable to a permanent support of both religion and education. This is in exact accord with what we shall find to have been the sentiment of the colonial government of Massachusetts at this time.

CHAPTER III.

COLONIAL GRANTS FOR GRAMMAR SCHOOLS.

Thus far we have been looking at the subject of school support in New England from the point of view of the towns or local units. We will now take the matter up from the standpoint of the colonial governments.

The facts already brought out go to show that while many towns were extremely enterprising in the support of education, others were extremely negligent. Had the towns, therefore, been the ultimate arbiters in the matter, educational development would inevitably have been far different than it was. But the colonial government occupied a position with respect to the towns which enabled it to impose upon the latter policies having their spring in the better sentiment of the colony at large. The men who were sent to the general court were generally the most intelligent and most public spirited citizens; and it is clear from the laws passed for school support in general that they were disposed to force the backward towns to adopt their more advanced views respecting education. In this way such a degree of progress was secured as would have been wholly impossible under purely local control. One of the local historians of Massachusetts forcibly expresses the idea thus: "There were men who . . . believed in education, and sacrificed a good deal to promote it. . . . But the people generally had to be whipped up to the necessary expenditure." "Had not the colony spurred them up there is no telling when the reputation of our fathers for zeal in education would have been born."⁴⁶

There can be no doubt that the colonial influence, exerted in the form of a more or less paternal watchfulness over the relig-

⁴⁶DeForest, *Early History of Westborough*, pp. 99, 96.

ious and educational welfare of the people, was a most important force in determining the educational history of the New England states. We, however, are especially concerned with a particular phase of that historical development, namely, landed support of schools.

From the colonial side, the policy of making definite grants of land for the purpose of promoting education seems to have arisen first in connection with the grammar schools. These institutions were very essential from the point of view of the New England fathers. The grammar school was the feeder of the college, that "School of the Prophets," from which the "learned and orthodox" ministry was recruited. But the maintenance of these schools bore very hard upon the towns; so much so that the fine for non-compliance with the law requiring every town of over one hundred families to support one, had to be increased in amount from time to time in order to make it effective. Even then many towns were "presented" for neglect each year. The fact seems to be that the grammar school was not popularly regarded as a necessity, and therefore its support was accounted a special burden.⁴⁷

Under such circumstances it is not strange that the colonial governments should have come to the rescue of the grammar schools by making special provision for their support.

The General Court of Massachusetts Bay in 1659, "in answer to the petition of the towns of Charlestown and Cambridge,— judge meet to graunt to each towne a thousand acres of land, upon condition that they forever appropriate it to [the maintenance of a grammar school] and within three years at furthest, lay out the same & put it on improvement; and in case that they faile of maintaining a grammar school during the said time they shall do so, the next grammar school of wt towne soever, shall have the sole benefit thereof."⁴⁸

The colony of Plymouth had an almost unique source of revenue in the fisheries at Cape Cod. Those who desired liberty to

⁴⁷The case of Woburn, cited above (p. 15) is an example.

⁴⁸*Colonial Records of Massachusetts Bay*, IV, 400.

take the "alewives" or herring there could secure the privilege only by paying a fixed license fee. At the Court held in March, 1672-3, a resolution was adopted granting the profits of the fisheries to the town of Plymouth, for the support of a grammar school already begun there, "and hitherto continued by God's grace with good success."⁴⁹ Plymouth received this money because she was the first town to establish a grammar school. Afterwards other towns built schools and then the "Cape Money," as it was called, was distributed among them. To illustrate: In 1683 "the Court have ordered the Cape Money as followeth: viz.: to Bastable school, twelve pound: to Duxburrow school, eight pound: to Rehoboth school, five pound: to Taunton school, three pound; and two pound to Mr. Daniell Smith."⁵⁰

This employed the whole of the thirty pounds now annually received for the fisheries, which therefore furnished the earliest actual school fund in America. Massachusetts Bay tried to stimulate the building of grammar schools by giving the towns large tracts of her surplus wild land. Plymouth, being straightened in her boundaries, was lacking this resource; so she substituted the profits of the sea.

In the same year that the town of Plymouth received the grant of the fishery profits (1672), the general court of Connecticut granted to the county towns of Fairfield and New London six hundred acres of land apiece "to be taken up where it may not prejudice any former grant, which sayd land shall be and belong to the said county townes forever to be improved in the best manner that may be for the benefit of a Grammar Schoole in the sayd County townes and to no other use or end whatsoever. There is also granted to the county towns of New Haven and Hartford to each of them, six hundred acres of land upon the same terms and to the same use with the other towns."⁵¹

⁴⁹ *Plymouth Colony Records*, V, 107-108. See on the Cape fisheries regulations, *Ibid.*, pp. 104, 243, 244. In 1677 the fisheries were granted to a corporation at an annual rent of thirty pounds, silver money of New England.

⁵⁰ *Ibid.*, p. 239.

⁵¹ *Colonial Records of Connecticut*, 1665-1677, p. 176.

Committees were appointed to lay out the lands to each of these towns in 1702. It appears, therefore, that they were of no immediate benefit to the schools. The consequence of that fact appears later in the direct payment of

It is clear from the above, that before the close of the seventeenth century, the colonial governments of both Massachusetts and Connecticut had committed themselves to the policy of encouraging grammar schools; and this was done, save in the case of Plymouth, by grants of wild land to the towns in which such schools were located.⁵²

a portion of the salaries of the grammar school masters by the colonial government. See for the appointment of committees to lay out the lands, *Colonial Records of Connecticut*, 1689-1706, p. 402.

⁵² It is interesting, by way of contrast to the public educational activity in New England at this time, to recall the notorious passage in Governor Berkeley's reply to the "Enquiries" of the Lords Commissioners, relating to education in Virginia in 1671:

"Question. What course is taken about the instructing the people, within your government, in the Christian religion; and what provision is there made for the payment of your ministers?

Answer. The same course that is taken in England *out of towns*; every man according to his ability instructing his children. We have forty eight parishes, and our ministers are well paid, and by my consent should be better if they would pray oftener and preach less. . . . But I thank God, there are no free schools nor printing, and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy, and sects into the world, and printing has divulged them, and libels against the best government. God keep us from both." (*Hening's Statutes*, II, 517.)

CHAPTER IV.

SCHOOL RESERVATIONS IN GRANTS OF TOWNSHIPS.

We have seen how, in early colonial times lands were granted by private individuals for the support of schools. We have also seen that in a large number of cases, towns having a surplus of wild lands within their borders, set aside portions of them for the same purpose. Lastly, we have seen how the difficulty in providing grammar schools induced the colonial governments of Massachusetts and Connecticut to make direct grants of wild land to towns on condition of their maintaining such schools.

Both of these colonies possessed large bodies of land which were only gradually occupied. The settlements, as in the beginning, were usually made not by individuals but by companies of people who bought "townships"⁵³ of land from the colonial governments and received "charters" therefor. In making such grants the government could of course impose any conditions it might see fit, as, for example, that the township should be settled within a certain period; that the proprietors should make provision for the support of a minister in the new settlement, etc. Various stipulations of this kind are found in the seventeenth century documents, and early in the eighteenth century the charters begin to contain a definite provision for the support of religion and schools.

Let us first consider the practice in the colony of Massachusetts. In a grant of land which became the town of Sutton, made by Lieutenant Governor Dudley with the consent of the general court of Massachusetts in 1704, the charter provi-

⁵³For a discussion of the "Genesis of the Massachusetts Town," see Chamberlain, *John Adams, with Other Essays*, pp. 180-228; also in *Massachusetts Historical Society Proceedings*, Second Series, VII, 214-242.

sions are thus stated: "Provided they intrench upon no former grant of the General Court, and they be obliged to settle thirty families and a minister upon said lands within seven years after the end of the present war with the Indians; and that they reserve three hundred acres of the said lands for the first settled minister four hundred acres for the ministry, and two hundred acres for the use of a school, all to be laid out conveniently."⁵⁴

In the charter of Lunenburg,⁵⁵ granted in 1719, similar provisions occur, except that a fourth reservation is made for Harvard College.

The town of Lunenburg was sufficiently settled by 1728 to induce the inhabitants to ask for political organization. In the act incorporating the town it is stipulated: "that the inhabitants of the said town do provide for the comfortable and honorable support of a learned and orthodox minister among them, and likewise provide a school master to instruct their youth in reading and writing." This was simply carrying into effect the fundamental legal requirements that every town maintain a minister, and also an elementary English school. Possibly the reservation of lands for those purposes was looked upon as a means of insuring compliance with these requirements.

In the grant of the territory of Westminster in the same year the failure to carry out the proviso respecting reservations was made a sufficient cause for forfeiture. "If the said grantees shall not effectually settle the said number of families in each township, and also lay out a lot for the said settled minister, one for the ministry and one for the school in each of the said townships, they shall have no advantage, but shall forfeit their said grants."⁵⁶

In 1735 the town of Boston petitioned the general court for "three or four townships" of the Hampshire wild lands, to ease her burden of colony and local taxation. The court granted her three townships, each to contain sixty three shares, "one to be

⁵⁴Benedict and Tracy, *History of the Town of Sutton*, p. 10.

⁵⁵*Early Records of the Town of Lunenburg*, facsimile of charter printed as frontispiece.

⁵⁶Heywood, *History of Westminster*; see copy of charter.

for the first settled minister, one for the ministry and one for a school."⁵⁷

The same year the general court of Massachusetts granted a township of land within the present limits of New Hampshire.⁵⁸ The charter contains this interesting passage: "And for the more effectual bringing forward the settling of the said new town, Ordered, that the said town be laid out into sixty three equal shares, one of which to be for the first settled minister, one for the ministry and one for a school."⁵⁹

In the list of Massachusetts charters for New Hampshire lands we find one of an early date, 1673. It contains no specific reservations, but there is a general reservation which may well have been the precursor of the better known forms of the next century. It reads: "The magistrates judge it meet to grant the petitioners request herein Provided that a farm of five hundred acres of upland and meadow be laid out of this tract for the publique use."⁶⁰

The latest of these New Hampshire charters is of the year 1773. It is the charter of the town of Walpole (N. H.), and contains four reservations; for the first minister, the ministry, the grammar school, and Harvard College. Aside from these two, one very early the other very late, there appears to be no variation in the reservations save a verbal one; and even this is extremely slight.⁶¹

In Massachusetts, therefore, we find at the opening of the century a clearly defined reservation policy, which was steadily adhered to down to the Revolutionary period. We shall find in a later phase of the study that it may be traced much further than this. Suffice it to say here that the common school fund⁶² of the state was based upon the proceeds of sales of land in Maine,

⁵⁷ Smith, *History of Pittsfield*, p. 65.

⁵⁸ This tract became the town of Dumbarton.

⁵⁹ *New Hampshire State Papers*, Town Charters, I, 79. The italics are mine.

⁶⁰ *Ibid.*, p. 84.

⁶¹ *Ibid.*, p. 353. The term "grammar school" occurs occasionally in place of "the school," and possibly the reservation may often have been made out of solicitude for the grammar school, rather than the common school. The evidence, however, is not clear on this point.

⁶² Boutwell, *Origin and History of the Massachusetts School Fund*, in *Report of Mass. Board of Education* 1859, p. 38.

and there are also numerous examples of the endowment of academies⁶³ from the same source, showing that the use of wild lands for the promotion of education had a large development in Massachusetts.

Turning to Connecticut, as in the case of Massachusetts, we find instances of grants for school purposes made by the proprietors of towns. That there was school land in Hartford is evidenced by the vote empowering the school committee "to exchange the house and home lot belonging to the town that is improved for the maintenance of a school in the town: either for mead land or other lands that may be of benefit or advantage to the said school."⁶⁴

In Waterbury the proprietors early set aside land for the school, the rent from which was applied to its support. In 1734 it was sold and a fund created.⁶⁵ Suffield also had a school lot which apparently remained unproductive until about 1750, when it was leased for nine hundred and ninety nine years.⁶⁶ There were also school lands in Guilford, for at a meeting in 1671, "the town, considering the necessity of education of children" appointed a committee to lay out 30 acres of upland and 20 acres of marsh, "to be kept and improved for the best benefit of a school in Guilford."⁶⁷

We have seen how, in 1672, the general court granted lands to each of the county towns for the benefit of a grammar school. These lands could not be made available at once, and the necessities of the schools were urgent. Accordingly in 1690, the court ordered that the masters of the schools in Hartford and New Haven should have an annual salary of sixty pounds in country pay, "thirty pounds of it to be paid out of the country treasury."⁶⁸ The provision was amplified in 1693, "for the encouragement of learning in this colony, there being fower

⁶³ Order respecting grants to academies, passed in 1797; see *Report of Commissioner of Education*, 1877-78, pp. 431-432. Also *History of Westfield*, p. 316.

⁶⁴ *Connecticut Historical Society Collections*, VI, 298.

⁶⁵ *Town and City of Waterbury*, I, 596.

⁶⁶ *Documentary History of Suffield*, p. 56.

⁶⁷ *History of Guilford and Madison*, p. 396.

⁶⁸ *Colonial Records of Connecticut* (1689-1706), p. 31.

grammar schools in the county towns of each county, this court having granted to Hartford and New Haven for the end aforesaid thirty pounds apiece to the said Towns, now gave to New London and Fairfield County schooles twenty pounds to each of those county townes."⁶⁹

In 1700 a law was passed requiring the keeping of a common school in all towns of thirty families; "And towards the maintenance of the schools respectively it was ordered, that from the colonie rates, as the country rates are paid by the treasurer shall be yearly paid forty shillings upon every one thousand pounds of the publick list of persons and estates unto the several towns for the use of their schools aforesaid."⁷⁰

This solicitude for education on the part of the colonial government, a little later also took the form of land reservations in townships.

In 1687 the general court of Connecticut, thinking to save its western lands from the cupidity of the royal governor, Andros, granted the greater part away to the towns of Hartford and Windsor. No consideration was given, either at the time or subsequently, the transaction being looked upon as a means of public defense.⁷¹ But the possession of the lands came to be so agreeable to the towns that when the danger was past, the tyrant gone and the charter government restored, they obstinately refused to give them up to the colony. A dispute ensued which raged for many years and at one time seemed on the point of issuing in civil war.⁷² But in the meantime, and before the passions of the parties had been excited to the limit, a portion of the Hartford claim was occupied by settlers. The town in 1715 sent an agent (John Marsh) to explore a tract of these lands; the following year he made a purchase of the Indians; and in 1718 a company was organized for the purpose of settling a town at a place then called Bantam and later Litch-

⁶⁹ *Ibid.*, p. 97.

⁷⁰ *Ibid.*, p. 331.

⁷¹ *Colonial Records of Connecticut, 1678-1689*, p. 225.

⁷² Trumbull, *History of Connecticut*, II, 95-99.

field.⁷³ This body of proprietors, although operating under the authority of the town of Hartford, deemed it prudent to secure a confirmation of their charter from the colonial government. In this confirmation three shares are mentioned as being set aside, "for pious uses,"⁷⁴ which meant the ministry, first settled minister and schools.⁷⁵

In 1726 the general court agreed with committees of the towns of Hartford and Windsor, that the lands claimed by them and by the colony should be divided equally between the towns on the one hand and the colonial government on the other; they to have the eastern portion and the colony the western.⁷⁶ The division was effected in 1731,⁷⁷ the government meantime having procured the extinguishment of the Indian title to its portion.⁷⁸

A committee appointed about this time to see what it was best to do with the lands secured to the colony, reported in favor of their sale by townships.⁷⁹ Another committee made a report in 1733 which stands as a landmark in American educational history. The clauses having special significance in this connection are therefore quoted entire.⁸⁰

"First, that an act be made and passed at this assembly, granting all the monies which shall be raised by the sale of the seven towns lately laid out in the western lands,⁸¹ to the towns of this colony that are now settled, to be divided to them in proportion according to the list of their rateable estate in the year last past, and to be secured and forever improved for the use of schools kept in said towns according to law."

"2d ly: In order to the selling and settling said townships"—they are to be divided into fifty shares—"besides three shares that shall be set apart, one for the first minister that shall be set-

⁷³ Kilbourne, *History of Litchfield*, p. 18 et seq.

⁷⁴ *Colonial Records of Connecticut*, 1717-1725, pp. 126-127.

⁷⁵ *History of Litchfield*, p. 22.

⁷⁶ *Colonial Records of Connecticut*, VII, 44.

⁷⁷ *Ibid.*, p. 337.

⁷⁸ *Ibid.*, p. 166.

⁷⁹ *Ibid.*, pp. 361, 386.

⁸⁰ *Ibid.*, pp. 457-458.

⁸¹ The towns planted in this tract were Norfolk, Kent, Goshen, Canaan, Cromwell, Salisbury, and Sharon. (Stelner, *Education in Connecticut*, p. 30.)

tled there, to be conveyed to him in fee; one to be sequestered for the use of the present established ministry forever, and one for the use of the school or schools in such towns forever."⁸²

This report was approved and its recommendations enacted into law. The proceeds from the sale of the seven townships made the beginnings of Connecticut's common school fund.

That part of the western lands which by the above agreement was patented to Hartford and Windsor, was also divided into seven townships. These were sold and settled in a similar manner. It is almost certain that the three reservations indicated above were made in these towns also, as in the towns sold by the colony.

Thus we have the spectacle of a large portion of western Connecticut settling up under the policy of school reservations for the benefit of the towns in which they lay; while the older towns participated in the school fund created by the sale of the seven western towns.⁸³

In the study of New Hampshire towns we have three sets of documents: (a) the town charters granted by the government of New Hampshire itself; (b) the charters of the Masonian proprietors; (c) the charters of Massachusetts already mentioned. From these three sources we are able to ascertain the conditions on which nearly all of the townships of New Hampshire, settled after 1720, were granted. A study of these documents reveals the following facts: The earliest charters, those of the year 1722, with one exception,⁸⁴ contain the regular reservations as found

⁸²The phrase "school or schools" leaves no doubt that in this case the common schools are meant. This would be assumed, also, from the fact that the grammar schools (one in each county) had been specially endowed.

⁸³For an account of Connecticut influence in Pennsylvania, and school reservations in the Susquehanna townships see Appendix II.

When, in October, 1786, Connecticut passed a law relating to the Western Reserve, she provided for laying out the region in townships, and for reserving in each township five hundred acres for the ministry, five hundred for schools, and two hundred and forty acres to be given, in fee simple, to the first settled minister. (See *Hinsdale, Ohio, Arch. and Hist. Society Publications*, II, 477.) This was after the first seven ranges of townships had been laid out in Ohio, each with the reservation of section sixteen for schools. We shall find that there was an effort made in the congress which passed the Ordinance of 1785 to secure a reservation for religion also.

⁸⁴Londonderry; no reservations save for Governor and Lieut. Governor. *Town Charters*, I, 277.

in the Massachusetts and Connecticut grants. They are, however, stated in a slightly different form; one share "for the first settled minister, one for the parsonage, and one for the school." In the case of Barrington two hundred acres were laid out for the parsonage, two hundred more for the first minister, and one hundred for a school.⁸⁵

From that date the practice seems thoroughly established. In 1727 at least four charters were granted, all containing the reservations as above. At a later date a fourth reservation was added which finds a place in all of the charters granted by Benning Wentworth, the royal governor, both in New Hampshire and in Vermont. This was a share for the Incorporated Society for the Propagation of the Gospel in Foreign Parts.⁸⁶

Reference has already been made to the provision in Capt. John Mason's will in favor of a grammar school in his county of New Hampshire. Capt. Mason did not foresee the vicissitudes that this property would encounter, nor that the name of Mason, for the preservation of which he provided so carefully in his will (granting the county to his grandson, Robert Tufton, on condition of his taking the name of Mason), would ultimately fade out of the proprietary. But so it was that after more than a century of litigation the rights of the last Masonian, John Tufton (Mason), were transferred to a company of twelve men usually known as the "Masonian Proprietors." This was in 1746.⁸⁷

The proprietors began soon to make grants of townships, and in the space of twenty years, 1748-1768, issued charters to forty distinct towns, in every one of which, without a single excep-

⁸⁵ *Ibid.*, p. 124.

⁸⁶ The charters of the years 1752, 1753, and 1754 contain all of the reservations except that for schools. But the town histories show that some of these towns had school lots in the plats drawn in accordance with the charters. The Masonian charters of even date contained the school reservation. Many of these Wentworth charters, too, were renewed for various reasons, and in such cases the provision for the school was uniformly inserted. Why the school was not mentioned in the charter, I have not been able to discover, but its omission was apparently accidental.

⁸⁷ The head of this proprietary was Theodore Atkinson, who was then and remained for many years, the secretary of the colony. His name appears on most of the charters granted by the colonial government.

tion, reservations were made for the first settled minister, for the ministry, and for the school. In one case a "mill right" was added to the list; and in a single instance, in 1769, the third reservation was stated for a grammar school.⁸⁸ Otherwise there is complete uniformity.

The "New Hampshire Grants," of territory in the present state of Vermont number about one hundred and thirty. Most of them were made after the year 1760, when the great immigration to Vermont began. With the exception of the fifteen or sixteen charters issued before 1760, all seem to contain the usual reservations; one for the first minister, one for the ministry according to the Church of England, one for the Society for the Propagation of the Gospel, and one for the school. In five of the cases above excepted, it has been ascertained, either from the plats, or from the town histories, that reservations for schools were included though not stated; and it seems reasonable to suppose that this was always true.

When the people of Vermont organized a government of their own, townships were granted by it with a somewhat different statement of reservations. In the charter of Montpelier, 1781, there are reserved, "one right for the use of a seminary or college, one right for the use of the county grammar school, one right for the support of public worship, and lands to the amount of one right for the support of an English school or schools in said township." It is worthy of note that the college and grammar school rights were placed under the control of the general assembly. The others were to "be and remain inalienably appropriated to the uses and purposes to which they [were] respectively assigned, and be under the charge disposal and direction of said town forever."⁸⁹

In 1794 the legislature of Vermont passed a law appropriating the glebe lands to the support of public worship, the rents and profits to be distributed among the several church organizations in the town in which such lands lay. This was a blow

⁸⁸*Town Charters*, V, 249.

⁸⁹Thompson, *History of the Town of Montpelier*, p. 24.

at the church of England.⁹⁰ A second law appropriated the lands reserved for the Society for the Propagation of the Gospel, to the towns for the use of the schools.⁹¹

⁹⁰*Documentary History of the Protestant Episcopal Church in the State of Vermont*, pp. 53-54.

⁹¹Slade, *Laws of Vermont*, pp. 193-194. The United States District Court, in a test case, decided that this act of the state legislature was legal. See also *Documentary History of the Protestant Episcopal Church in Vermont*, pp. 338-341, 357-360.

It is hardly necessary to point out here that in the Vermont grants made by the New York government (which claimed the territory), no reservations were made for religion and education. (See *Green Leaves from Whittington*, p. 734, for copy of a New York charter.)

The notable letter of Dr. Samuel Johnson, of King's College, New York, to Archbishop Secker, April 10, 1762, is in point here. He says: "And I beg leave, my lord, to observe, that it is a great pity, when patents are granted, as they often are, for large Tracts of Land [in New York], no provision is made for Religion or Schools. I wish therefore Instructions were given to our governors never to grant patents for Townships or Villages, or large Manors, without obliging the Patentees to sequester a Competent portion for the support of Religion and Education." (*Documents Relative to Colonial History of New York*, VIII, 497.) Dr. Johnson was very familiar with the customs of the New England colonies, especially Connecticut.

New York adopted the land grant policy after it had been put in operation by the national government, and applied it to the western part of the state.

CHAPTER V.

NATIONALIZATION OF THE RESERVATION POLICY.

We have traced the policy of reservations by colonial governments down to the end of colonial times. It now remains to see, whether the policy was a continuous one extending generally into the constitutional period; and whether there was any connection between this policy in the New England states and the national reservation policy inaugurated with the Ordinances of 1785 and 1787.

Let us take Massachusetts as the typical New England state. Coming at once to the period following the Revolution we find that in 1785, the year of the land ordinance, a law was passed granting a confirmation of five townships between Penobscot and Union Rivers in the district of Maine. In each of the townships four lots were reserved, one for the first minister, one for the ministry, one for future appropriation, and "one for the use of a school forever."⁹²

In 1786 it was resolved⁹³ "that the committee for the sale of the unappropriated lands belonging to this commonwealth in the county of Berkshire, Be and hereby are empowered and directed, in the disposal of the lands belonging to this commonwealth in the district of New Ashford, to provide for the following reservations and appropriations, viz: two hundred acres for the first settled minister, two hundred acres for the use of the ministry, and two hundred acres for the use of a grammar school."

An act was passed in March, 1786, confirming Deer Island and Sheep Island to the inhabitants of those islands respectively, on condition, first, of their paying a certain sum into the state treasury, and second "that they appropriate three hundred acres

⁹²*Laws and Resolves of Massachusetts, 1784-85, p. 407.*

⁹³*Laws and Resolves of Massachusetts, 1786-87, p. 299.*

of land for the ministry and three hundred acres for the use of a grammar school."⁶⁴

A certain township, referred to in the acts as "Number 3" had been granted in March, 1785, to a group of persons, "on conditions which it is improper to insist on the performance of as per charter;" said lands are therefore confirmed to the same parties "with the reservations and on the provisions and conditions expressed," in the original resolve. These conditions had reference to the three reservations, one for the school. It is interesting to note that "Township number 3" was surveyed by Rufus Putnam.⁶⁵

In 1719 two townships were ordered to be laid out for the benefit of the sufferers from the burning of Falmouth, now Portland, by the British in 1775. In each four lots of three hundred twenty acres were to be reserved for the usual uses.⁶⁶ We have a similar case in 1792 and other cases later.⁶⁷ But it will not be necessary to detail them. Enough has been said to prove the continuity of the policy. It originated with the colonial governments in the period about 1700 and extended well into the constitutional period.

We are now to inquire whether the national policy,⁶⁸ usually traced no further back than 1785 or 1787, is in any sense an outgrowth of this New England system. On general principles it would seem that a policy so deeply rooted in the institutional life of an important section must have an influence upon the government of which that section forms a part; but it is possible to trace a close and direct connection.

The treaty which closed the Revolutionary War left us an independent people, with boundaries including territory far beyond the frontiers of settlement on the west. This great stretch of wilderness, from the Alleghanies to the Mississippi, became,

⁶⁴*Laws and Resolves*, 1784-85, p. 925.

⁶⁵*Ibid.*, p. 887.

⁶⁶*Ibid.*, (1786), 415.

⁶⁷*Ibid.*, (1792), 464.

⁶⁸I have received much help on the later phase of this subject from the monograph on "*The History and Management of Land Grants for Education in the Northwest Territory*," by Geo. W. Knight, Ph. D., published in the *American Historical Society Papers*, volume I.

by cession of the several claimant states, the endowment of the general government. Just as Massachusetts in 1700 had a body of wild lands which could be granted on conditions; just as Connecticut had western territory which could be set off into townships and sold for the benefit of the entire colony; so now the nation was the possessor of a vast tract of wild lands, the management of which was destined to be deeply significant in its influence upon American institutions in general, and especially on the institutions of education.

In 1784 Virginia, which had by far the most important claim to western lands, ceded her rights to lands northwest of the Ohio River to the government of the Confederation "for the common benefit of the states." The congress at once proceeded to assert its jurisdiction over the district, though the claims of Massachusetts and Connecticut to portions of the same territory, were not formally yielded till some time later.

While the first proposal of Virginia was under discussion, in 1783, Col. Bland, a delegate from that state, moved in congress to accept the cession on the terms proposed by Virginia: and that the territory to be ceded be divided into districts of a definite shape each district to become a state on possessing 20,000 inhabitants. Some of the lands were to be given to the Revolutionary soldiers as bounties; but one tenth of them were to be reserved by congress, the income to be "appropriated to the payment of the civil list of the United States, the erecting frontier forts, the founding seminaries of learning,"⁹⁹ and the surplus, if any, to be appropriated to the building and equipping a navy." Nothing came of this motion.

Although this was the first proposition made in the congress looking to the appropriation of the national domain to the support of education, it will be observed that the form of the proposition is wholly different from that ultimately adopted. It contemplated, apparently, the endowing of colleges, and the author

⁹⁹ Virginia, in 1780, appropriated eight thousand acres of land in the county of Kentucky "for the purpose of a public school, or seminary of learning, to be erected within the said county." *Hening's Statutes*, x, 287. This may indicate what Col. Bland had in mind in the above motion.

of it seems to have had no conception of the support of a common school system by that means. That idea was to come from another quarter: the quarter, namely, in which it was already, and had been for a long time, operative.

This same year, 1783, a movement was started in New England, having in view the emigration of a large body of Revolutionary veterans to the Ohio country, and the planting of a state there. Timothy Pickering of Massachusetts drew up the plan for the proposed state,¹ and on the basis of this plan General Rufus Putnam, the leader of the movement, submitted a petition to congress. Pickering suggested² that, after satisfying the just demands of the Revolutionary soldiers, "all the surplus lands should be the common property of the state, and disposed of for the common good, as for laying out roads, building bridges erecting buildings, especially schools and academies, defraying the expenses of government and other public uses."³ "Schools and academies" has a different ring to our ears than "seminaries of learning."

The commentary needed to explain just what was meant by Pickering's statement is supplied by the letter of Rufus Putnam to Washington, submitting a petition to Congress. In this letter which was sent to the congress together with the more formal document,⁴ he suggests that, "the lands should be divided into townships six miles square, with reservations for schools and the ministry."

Here we have exactly what we should expect. In this projected migration of New Englanders to the great West it was proposed, very naturally, to take with them the institutions with which they were thoroughly familiar and to which they had become attached. They had in mind the same system of local self government which prevailed among them, and which

¹Pickering, I, p. 546, et seq. Also found in the *Ohio Archaeological and Historical Society Publications*, IV, 2-5.

²*Ibid.*, p. 548.

³Knight, p. 35.

⁴See Walker, *History of Athens County, Ohio*, pp. 30-36, for Rufus Putnam's letter to Washington. For Washington's letter to Congress, see Ford's *Writings of Washington*, x, 267.

was applied to their own back country; hence the township "six miles square," long the customary size and form of the townships granted by the New England colonial governments in their western lands.⁵ Provision for the ministry was one of the first conditions enjoined upon the proprietors of such new townships and a landed endowment for this purpose, as well as for schools had long since come to be the settled policy. How appropriate that a man who was employed to lay out these lands in the wilds of New England, who had surveyed "township Number 3" in Lincoln county, should be the first to suggest to the national congress, now that it had wild lands to deal with, the policy to be pursued respecting surveys and reservations. But time and stress would still be required to realize the idea in the national system.

In May, 1784, Mr. Jefferson reported a bill "for ascertaining the mode of locating and disposing of lands in the western territory." Its consideration was postponed and it was not taken up until March of the next year. Then it was recommitted and a new bill reported having similar provisions. This in turn was temporarily laid aside, apparently to give time for discussion outside of congress. Copies of the proposed bill were sent to prominent men in different sections. Col. Timothy Pickering objected to it on the ground that there was "no provision made for ministers of the Gospel, nor even for schools or academies."⁶ This criticism was made in a letter to Rufus King, a member of the committee that made the report. The bill was recommitted March 16th, Rufus King being again on the committee. The result was a new ordinance under the old title but embodying many modifications. In it appeared the following clause: "There shall be reserved the central section of every township for the maintenance of public schools, and the section immediately adjoining for the support of religion, the profits arising therefrom in both instances to be applied forever according to the will of the majority of male residents of full age within the same."

⁵ But Connecticut often granted townships five miles square.

⁶ Pickering, I, 509. Letter from Pickering to King.

In a letter accompanying a copy of the report, Rufus King wrote to Pickering, "You will find thereby, that your opinions have had weight with the committee that reported this ordinance;"¹ The part of the clause respecting religion was stricken out by the congress, but the provision for education remained in the ordinance as adopted. This is one landmark.

In pursuance of the ordinance of 1785 the so called "seven ranges" of townships were surveyed. The sales, however, were of little consequence, and it was seen that if the lands were to be a source of revenue, which the bankrupt state of the treasury rendered imperative, something must be done to hasten their sale. The plan finally adopted was dictated by necessity and rendered possible of execution by a peculiar set of circumstances. It was, namely, to lump off the lands in great blocks to land companies, who were ready to supply the treasury in return with appreciable sums of money. The companies would parcel out the lands among actual settlers.

In 1786-7 a new company of New Englanders was organized for the purpose of settling Revolutionary soldiers and others in the Ohio country. Rufus Putnam was a leading figure in the new organization, and associated with him were Manasseh Cutler and Samuel Holden Parsons. A memorial to congress was at once drawn up and presented in May, 1787. This paper contained a proposition on the part of the company to purchase of the government a body of contiguous territory north of the Ohio and to plant a new state there. It injected new life into the whole question of dealing with the western lands.

A new ordinance was reported providing for the government of the North West Territory. A former bill, which contained no education clause, had been recommitted and formed the basis of the new. This measure was enacted into law as the "Ordinance of 1787," on July 13th. It contains the famous passage, "Religion, morality and knowledge being necessary to good government, and the happiness of mankind, schools and the means of education shall be forever encouraged."

¹ Pickering, I, p. 511.

The Ohio Company was on the ground in the person of the skillful lobbyist, Dr. Cutler, and it is scarcely doubtful that he exerted great influence in favor of the principle. However that may be it became ingrained in the life of the nation and was realized in the magnificent endowments received by the new states.

But we have not forgotten that the New England idea coupled the support of education with that of religion. Would the government be prepared to accept the entire system? The committee appointed to deal with Dr. Cutler, after several conferences with him, reported in favor of selling the lands on Cutler's terms. He had stipulated that one lot in each township was to be reserved for common schools, another for the support of the ministry, and that four whole townships should be set apart for the maintenance of a university. Congress was unwilling to make such liberal donations, and framed a contract ordinance providing for the reservation of but one section in each township, number sixteen, for schools. Cutler would not accede to the terms and made new proposals, which congress, under the stress of circumstances, felt obliged to accept. The provision for reservations was as follows: that "Lot number sixteen be given perpetually, by congress to the maintenance of schools, and lot number twenty nine to the purpose of religion in the said townships. Two townships near the center and of good land to be also given by congress for the support of a literary institution, to be applied to the intended object by the legislature of the state."⁸

Similar reservations were made in connection with the Symmes purchase made during the same year. But this was the last occasion on which provision for religion was made by the national congress, while with regard to schools, the "section sixteen" clause in the land ordinance of 1785, became the principle in all future grants within the North West Territory, and also in the new states of the Southwestern and trans-Mississippi territory, erected prior to 1850.* From that time two sections in each township, sixteen and thirty-six, were granted for school purposes.

⁸ Knight, p. 17.

* Oregon, admitted in 1859, was the first state to receive two sections.

APPENDIX I.

THE EFFICIENCY OF SCHOOL RESERVATIONS IN NEW ENGLAND.

(a) Massachusetts.

The township of Sutton¹⁰ was granted in 1704. In 1725, at a town meeting, it was "Voted that the school land in Sutton be all sold, reserving the thirty acre lot, and the money to be put out for the benefit of a school in Sutton forever."

Col. Jonathan Harwood entered his dissent against the lands being sold. Apparently the opposition made headway, for in 1734 the selectmen are ordered to act as a committee, "to see whether the town may with safety make a sale of the school lands." In 1741 a committee was appointed to lease out the school lands. But four years later it was "Voted, to appoint a committee, to prepare a petition to ye grate and Generall Court, praying liberty to make sale of school lands." Evidently the sale was made, for in 1777, when a portion of the inhabitants sought to be set off as a separate parish, they asked for their, "part of the school money for future time."

In 1775 the town's school fund, which represents doubtless, the money received for this land, with possibly some accretions, was reported as amounting to £144 17s. But at a later time this fund seems to have been lost, either by misappropriation or by bad investment.

In Worcester¹¹ the school lands yielded an income as early as 1742, when it was, "voted that all the money due to the town from persons not serving as constables to this time, the rent of the school lands hitherto and for the present year, and the money

¹⁰Benedict and Tracy, *History of Sutton*, pp. 32, et passim especially, 52, 60, 70, 71.

¹¹*Records of Worcester*, part 2, p. 28.

due from the trustees amounting in ye whole to—£41 15s 1d be applied towards paying the town debts." In 1754 a committee which had been appointed to consider the question of selling a small portion of the school land reported against the sale. Here again, there was evident fear that an actual sale of the school lands would be in violation of the terms of the charter; and a plan was devised to escape the legal difficulty. Instead of selling the lands they were leased for nine hundred and ninety nine years, at a yearly rent of £5, and a lump sum, sufficient to produce £5 annually at six per cent. interest, was taken in full discharge of the rent for the entire term. The annual interest was to be devoted to the support of the school.¹² In 1769 the town negatived a motion to sell other school lands.¹³

Pittsfield¹⁴ was one of the towns granted to Boston in 1735, in which school reservations were made. In 1855 the town received about \$120 yearly from lands thus appropriated more than 100 years before.¹⁵

In Palmer,¹⁶ chartered in 1732, the school lot was sold in 1758 for £30 13s 4d. The ministry lands were also sold and the two sums jointly devoted to the purchase of another farm. How this latter was used is not clear.

Lunenburg was chartered in 1719 and incorporated in 1729. The school lands were not all laid out until 1764, when 169 acres were set aside by the proprietors.¹⁷ The town records, which extend only to 1763, give us no information as to the use made of these lands; but they show that great interest was taken in educational affairs. Interesting questions concerning the school lands arose, when Fitchburg,¹⁸ which was set off from Lunenburg in 1764, tried to secure its share of them. Committees were chosen at several different meetings, to search the records of Lunenburg to find out what agreement was made be-

¹² *Ibid.*, p. 35.

¹³ *Ibid.*, p. 164.

¹⁴ Smith, *History of Pittsfield*, p. 136.

¹⁵ Holland, *History of Western Massachusetts*, I., p. 497.

¹⁶ *History of Palmer*, p. 30.

¹⁷ *Proprietors Records, Lunenburg*, p. 108.

¹⁸ *Old Records of Fitchburg*, pp. 192, 193, 209, 271.

tween the two towns concerning these lands, and to settle with Lunenburg or prosecute to final judgment. One committee was instructed to search the town records of Lunenburg, "and take a tested coppes of the records, to know what purpose those lands was granted for and to see if the town of Fitchburg had any rights," to them. Here the Fitchburg people seem to have dropped the matter.

We find, therefore, by a study of the records of five of the Massachusetts towns, in whose charters reservations were made, that in at least three cases, the grant was effective in producing funds, and that these funds were used for the support of schools within the respective towns. The other two cases are doubtful.

(b) *Connecticut.*

We have seen how the proprietors of Litchfield, under the confirmation by the general assembly, of a grant made by Hartford and Windsor, set apart one sixtieth part of the town for the use of a school. The town being a large one, such a share amounted to about 700 acres. In 1729 it was voted to sell these school lands for £1,000. Probably there was opposition on the ground of lack of power to alienate, for at a later meeting of the same year, an agent was appointed to apply to the general assembly, "For liberty to make sale of the school lands in Litchfield." In November it was voted that the school lands should be leased for the support of a school for the period of nine hundred and ninety nine years. An interesting feature of this vote is that in which the townsmen bind their successors, "in ye recognizance of £10000, lawful money, to give a new lease of said right at the end of said term of nine hundred and ninety nine years, if there shall be occasion."¹⁹ The terms of the instrument, which was executed April 15, 1730, were as follows: for eight years the lease to pay £27 annually: then a lump sum of £450.

The following is typical of not a few entries in the colonial records of both Massachusetts and Connecticut, and shows that

¹⁹*History of Litchfield*, pp. 5, 6; also, p. 57.

the school right was in general accounted as a valuable property. In 1768 the inhabitants of South Farms, a parish in Litchfield, petitioned the assembly, reciting, "that the General Assembly in their grant of said township reserved certain lands in said township for pious uses in said town:" that they have already been constituted a parish "yet the first society refuse to grant them their proportion of said interest." A committee was appointed to look after the interest of the petitioners, in other matters, and to find out "the condition of said school lands."²⁰

Goshen was one of the seven western towns. "In 1742, before the town was incorporated, the proprietors leased the school right for nine hundred and ninety nine years, and voted that the proceeds should be used to support two schools in the east part of the town, one in the south and one in the west part of the town."²¹ Torrington had a school lot appropriated by the proprietors in 1754. In 1772 it was leased for 999 years, for £93 14s. The income of the fund so created was devoted to the use of the school.²² Suffield²³ likewise had a school lot, laid out by the proprietors. It was also leased for the same term, about 1750. We are not assured that the income was devoted to the use of schools.

(c) *New Hampshire.*

In New Hampshire we are able to follow the fortunes of the school lot in fourteen different towns, whose charters contained the reservations. Out of this number of cases twelve towns either sold the school right or leased it for 999 years, and applied the income to school support. In one case the lands were sold but the money received is not accounted for; and in the fourteenth case they were leased for 900 years, for a lump sum, and the money misappropriated.

Some very interesting facts are disclosed. In New Ipswich²⁴ the lands were sometimes improved by the town, sometimes

²⁰*Colonial Records of Connecticut*, V, 13, 41-2. (1768.)

²¹Hubbard, *History of Goshen*, p. 266.

²²Orcutt, *History of Torrington*, p. 150, et seq.

²³*Documentary History of Suffield*, p. 56.

²⁴*History of New Ipswich*, p. 106.

leased, till 1796 when a part of them were sold and the proceeds funded. Sales were made at intervals thereafter until in 1835 the fund was \$1,351.62.

In Marlborough²⁵ the school lands were leased in 1767, for 100 years; but on the expiration of the term they were leased for 50 years.

In New Boston,²⁶ we are told, the school fund, from the early sale of the school land, became absorbed in other town funds, and was largely lost. In 1864 the income was only \$15 per annum.

A committee appointed in Dublin,²⁷ New Hampshire, in 1820, found that the school lands had been sold at different times: part in 1777, part in 1782, and the remainder in 1815. The total receipts amounted to \$1,576.15. The town voted "that the interest of the above sums" (ministry lands had likewise been sold) "should be appropriated agreeably to the charter of the towns."

The case of Concord is so interesting that I give it in the language of the town records:²⁸

March, 1777: "Voted to reconsider the former vote of this parish passed March the 7th. 1775, for leasing the eighty acre lot, belonging to the school right to Oliver Hoyt for 900 years, He paying the parish \$6 yearly and it is hereby voted that instead of said Hoyt paying the parish \$6 annually, the selectmen are directed to receive of said Hoyt \$100 in full consideration for said lot and give said Hoyt a full discharge." And immediately following, "voted that the selectmen be directed to lay out the \$100 which they shall receive of Oliver Hoyt for the eighty acre lot belonging to the school right, for a town stock of ammunition."

Somewhat aside from our main inquiry, a vote of the town of Chester²⁹ may throw some light on the way in which proprietary lands came to be donated to school and other public uses. This

²⁵ Bemis, *History of Marlborough*, p. 143.

²⁶ *History of New Boston*, pp. 148-149.

²⁷ *History of Dublin*, p. 244.

²⁸ *Town Records of Concord*, p. 153.

²⁹ *History of Chester*, p. 274.

was one of the earlier towns, whose charter evidently did not make the reservations which later became customary. In 1721 the town, "Voted, that—the next proprietor that shall forfeit his lott, the same shall be appropriated for a school."

(d) *Vermont.*

When we come to Vermont our evidence is far less satisfactory. Out of a total of sixteen towns, all but two of which had school rights, the histories account for these rights in only seven cases. Of these one, Guildhall,³⁰ rented its school lands in 1799 at the rate of \$2 per acre (valuation), on which six per cent. interest per annum was collected down to 1886. Montpelier³¹ leased one division of her lands in 1795, at the rate of 1s 5d per acre.

In Middlebury³² the rent of the school land is said to have been \$119 about 1856. In three other towns the lands were leased; the amount paid in one instance³³ yielding an annual income of one hundred dollars.

In the case of the town of Salisbury,³⁴ it appears that the intent of the charter was defeated by the proprietors, who laid out a part of the school right on the mountain, where the lands were worthless.

³⁰Chamberlain, *History of Guildhall*, p. 101.

³¹Thompson, *History of Montpelier*, p. 69.

³²*History of Middlebury*, p. 369.

³³See *History of Bradford*, p. 69.

³⁴Weeks, *History of Salisbury*, p. 43.

APPENDIX II.

NOTES ON THE CONNECTICUT INFLUENCE IN PENNSYLVANIA.

The first settlements of Connecticut people in Pennsylvania were made under the auspices of the Susquehanna Company, about 1769. "At a meeting of the Susquehanna Company held at Hartford, Connecticut, 28th December, 1768, it was voted to lay out five townships of land within the purchase of said Company, on the Susquehanna, of five miles square each; that the first forty settlers of the first town settled, and fifty settlers of each of the other towns settled, shall divide the towns among themselves; reserving and appropriating three whole shares or rights in each township, for the public use of a Gospel Ministry and schools in each of said towns; and also reserving for the use of said Company, all beds and mines of iron ore and coal that may be within said townships.

"It was also voted to grant to Dr. Eleazer Wheelock, a tract of land in the easterly part of the Susquehanna purchase, ten miles long and six miles wide, for the use of the Indian school under his care; Provided, he shall set up and keep said school on the premises."

The Indian school was not planted. Wheelock went to New Hampshire and founded Dartmouth. The lands to be reserved in each township were laid out as intended, and "in a general way the whole was set apart for school purposes, but in a number of instances land was voted for the support of Ministers of the Gospel. The funds arising from the sale of these lands were not husbanded as they might have been, but in some townships they still exist and are used for the benefit of the public schools. The schools as well as other local affairs were managed, as in New England, by a general town meeting.

"This system substantially continued in operation in the Wyoming region up to the time of the adoption of the common school system in 1834, when, with little change and no disturbance, it was merged into it; and, as the nearest approach to our modern public schools of any class of schools then known in Pennsylvania, it had considerable influence in shaping the school legislation which culminated in the act of 1834. It was Timothy Pickering of Luzerne who, in the Constitutional convention of 1790, secured the adoption of the article on education upon which was subsequently based the whole body of laws relating to common schools in Pennsylvania, up to the year 1874; and by so doing saved the convention from the threatened danger of committing itself to a much narrower policy."³⁵

³⁵Wickersham, *History of Education in Pennsylvania*, pp. 74-77. The portion starred is quoted by Wickersham, page 75, but no citation is given to show its origin. See on Pickering's work in the convention, *Ibid.*, pp. 255-260.

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**THE KING'S HOUSEHOLD IN ENGLAND BEFORE THE
NORMAN CONQUEST**

BY

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PREFACE.

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LAURENCE M. LARSON.

Madison, Wis., Aug. 3, 1904.

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ABBREVIATIONS.

- A.-S. Chron.: Anglo-Saxon Chronicle. (Thorpe.) 2 vols. London, 1861.
- Beow.: Beowulf.
- Bibl. der ang. Poesie: Bibliothek der angelsächsischen Poesie. (Grein; later edition by Wülker.) 3 vols. Cassel, 1883-98.
- Bibl. der ang. Prosa: Bibliothek der angelsächsischen Prosa. (Grein.) Cassel and Göttingen, 1872.
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THE KING'S HOUSEHOLD IN ENGLAND BEFORE THE NORMAN CONQUEST.

CHAPTER I.

THE PROBLEM AND THE SOURCES.

The importance of the king's household as an element in the social and political life of a nation has always been considerable. In earlier days, as the center of culture and the home of power, the royal court exerted a directing influence that was felt to the farthest limit of the kingdom and often beyond. In the shadow of the king's house creed and custom grew to strength and maturity, dialects rose to the dignity of language and the beginnings of letters, learning and art received a sheltering care. It is not long since the final word on all political matters was spoken in the king's council-chamber; and even in these days of organic laws and parliaments the influence of the royal surroundings on the determination of state policies is not to be wholly ignored. During the middle ages, when the royal court and the central administration were practically the same thing, this influence was particularly potent. However, as government in the later centuries became more highly organized and was differentiated from the court, the importance of the palatine service naturally declined. New institutions developed and replaced the crude creations of the earlier age; still, many of these, when followed back to their origins, will be found to have historic connection with the royal court.

It is my purpose to present in the following chapters a study of the king's household in early England,—to show, as far as

possible, the lines of development, the causes of changes, the sources of innovations, and the successive periods of growth. The work naturally begins with the earliest historic period of Teutonic Britain and properly closes with the passing of the Saxon dynasty. The field of research can be most conveniently divided into four sections, corresponding to the four periods of Old English history: the time before Alfred, when the country was still divided into petty kingdoms; the period from 871 to 1015, or, in a general way, the tenth century; the Danish period; and the reign of Edward the Confessor. In discussing the sources, however, no distinction need be made between those of the third and fourth periods as they are of much the same character and may be considered under one head, as eleventh century documents.

Of the sources antedating Alfred's accession the charters and the laws claim the greatest antiquity. In Kemble's collection of Anglo-Saxon charters¹ there are sixty-two documents that are referred to the seventh century. Unfortunately nearly all of these are forgeries; of the sixty-two only eleven have satisfied Kemble as to their genuineness,² and in all probability a closer examination would reduce this number considerably. In justice to Kemble it should be said that his criticisms generally appear so just and so conservative that one who uses his work hesitates to question his authority. Yet, I am unable to see how he could have passed the first document in his collection without at least expressing a doubt. As the charter has no signatures we have to depend wholly on the text in investigating it as to authenticity. The grant has the boundaries given in the vernacular,³ in a sentence of good normal West-Saxon which might have been written in the tenth century. That such could have been the language of Kent in the days of Augustine is simply unthinkable. There seems to be no authentic charter before the last quarter of the seventh century. Birch, in his *Cartularium Saxonicum*, has introduced a number of documents of ecclesiastical origin which belong to the seventh century. But while these have their value it

¹ *Codes Diplomaticus*.

² Nos. 1, 12, 16, 19, 27, 32, 35, 36, 43, 47, 995. Kemble thinks the oldest document in his cartulary (dated 604) is genuine, but marks the following ten as suspicious, thus finding but one genuine charter before 676.

³ *Hic est terminus mei doni: fram suðgeate west, andlanges wealles oð north-lanan to stræte, and swa east fram stræte oð doddinghyrnan ongean bradgeat.*

is not as native English sources reflecting Saxon life and institutions: they are mainly papal letters, valuable to the student of institutional history only when they presuppose English sources and conditions.⁴ Furthermore, we cannot know whether we possess them in their original form. Many are from the writings of Bede and other churchmen who may or may not have copied them accurately. And if they have been summarized rather than transcribed, they are for our purposes of no more ancient authority than other statements by the transcriber.⁵

The case of the Old English laws differs somewhat from that of the charters. Their beginning is usually referred to the reign of Æthelbirht. While we cannot know whether this king issued any charters, we have good reason to believe that he mended the laws. Bede tells us that Æthelbirht, following the example of the Romans, established laws; he adds that these were in force in his own day and that they were written down in the speech of the Angles.⁶ The Kentish dooms have come down to us in a manuscript of the twelfth century.⁷ As this was produced more than five hundred years after the time of Æthelbirht, we have good reason to doubt whether we possess these laws in their original form. What language was used when they were first put to writing we cannot know, though Bede informs us that an Old English version existed in his day.⁸ If we assume that they were originally written in the Kentish dialect, we are met by the question, to what extent was the phraseology changed when they passed into their present form? The language is archaic, but not sufficiently so to remove all doubts. The same question arises if we assume a Latin original and a later translation into Anglo-Saxon toward the close of the century. If the present version is based on such a translation the value of these laws for present purposes would be greatly reduced. Our work deals

⁴For ecclesiastical documents see especially the great compilation of Haddan and Stubbs: *Councils and Ecclesiastical Documents Relating to Great Britain and Ireland*. 3 vols. Oxford, 1869-78.

⁵Birch has published a number of charters that are not found in Kemble's *Codes*. Many of these are, however, of a decidedly suspicious character.

⁶*H. B.*, II, 5.

⁷Schmid, *Gesetze*, XXX.

⁸Alfred understands Bede to say that the King ordered the laws to be drawn up in the Kentish language ("and ða het on Englisc awritan") but such is not a necessary interpretation of Bede's language: "quae conscripta Anglorum sermone hactenus habentur et observantur." *H. B.*, II, 5.

largely with terms and the great problem is to fix their significance for this or that particular period. The changes that occurred in the Germanic dialects during the middle ages were of far-reaching consequence in the world of language. Many terms that suffered no external change might express several wholly different ideas in the space of a few centuries. The same lack of stability appears in the Latin of the age: almost any official or man of prominence might be called a *princeps*; and this term might again be rendered differently by a Saxon translator, *epeling*, *ealdorman*, *eorl* and *gesip* being possible renderings. From a study of the probabilities of the case I conclude, that the terminology of the Kentish laws can hardly belong to a period much earlier than the close of the seventh century.⁹ This conclusion especially affects the dooms of Æthelbirht. But the substance of these laws evidently belongs to a very early period and may be much older than the language of the versions that have come down to us.¹⁰

The narrative Latin prose of this period dates from the beginning of the eighth century. Bede's Life of Saint Cuthbert¹¹ is one of our earliest sources, but an anonymous life of the same saint was written a few years earlier, about the year 700.¹² The titles, character and value of Bede's works are so well known that I refrain from enumerating or discussing them at length.¹³ Alongside of Bede's writings the student of early English culture would place Eddi's Life of Wilfrid,¹⁴ a semipolemic biography from about 710. The very fact that it was written by a partisan makes it valuable, as it thus shows the active forces of culture in a stronger and clearer light.

The chroniclers and encomiasts can, as a rule, in institutional

⁹Schmid (*Gesetze*, XXXI) and Slevens (Paul und Braunes *Beiträge*, XII, 173-174) believe the language of Æthelbirht's laws to be such as was spoken in Kent in the days of that king.

¹⁰The Anglo-Saxon laws are found in the following collections:

Thorpe, *Ancient Laws and Institutes of England*. 2 vols. London, 1840.

Schmid, *Die Gesetze der Angelsachsen*. Leipzig, 1858. Cited as *Gesetze*.

Liebermann, *Die Gesetze der Angelsachsen*. Halle, 1898-99. Cited as *Gesetze*.

¹¹Venerabilis Bedae *Opera* (Stevenson). London, 1841.

¹²*Ibid.*, II, 259-84.

¹³The *Historia Ecclesiastica* has been several times edited, as have Bede's other works. See Gross, *Sources and Literature of English History*, 180-81, 216. My citations are from Stevenson's edition of Bede's works published by the English Historical Society.

¹⁴*Hist. York*, I.

matters be regarded as speaking for their own generation only. Rarely, as when sources are quoted verbatim, can we trust them for earlier times. But when we approach the poetic memorials of the age, we meet a wholly different problem. It is usual to speak of two periods of Old English literature:¹⁵ the Anglian, which may be said to close about the year 800, and the Saxon, beginning with Alfred's reign.¹⁶ Scholars have, in general, come to an agreement as to which period the various works are to be assigned. The specifically Biblical poems seem to belong for the most part to the earlier age. When the earliest was produced cannot be known. Christianity came to Kent in 596, and about thirty years later it got a foothold in Northumbria; but we should not expect the poets to become immediate masters of the poetic materials of the new faith. We may reject the legend as to how Cædmon was endowed with the gift of song, but the essential facts seem reasonable. Cædmon is said to have died about 680; he became a poet in his old age. So far as we know, then, Christian poetry arose among the Angles some time during the last quarter of the seventh century. For institutional purposes we may consider it as reflecting the life of the eighth.¹⁷

Our most important poetic sources are, however, not Christian. There are in Old English literature a few brief poems of a lyric or heroic nature, which point to a purely Teutonic origin.¹⁸ With these we should class, perhaps, the greater part of Beowulf.¹⁹ These afford us glimpses of the life in camp and court; they show us the *comitatus*, not as a mere memory but as a vital fact. How far back in time these can be placed is uncertain; but it seems to me they must have been produced and have become current before Christianity became a dominant influence. At the very latest, they must be placed before the middle of the seventh century. These poems, as the bearers of the old Odinic culture, as the mem-

¹⁵ On matters of date and authorship of Anglo-Saxon writings, see Wülker, *Grundriss zur Geschichte der angelsächsischen Literatur*. Leipzig, 1885. Cited as *Grundriss*.

¹⁶ During the intervening century, the period of the viking invasions, culture in the form of literary productions was apparently extinct.

¹⁷ The best collection of Anglo-Saxon poetry is Grein's *Bibliothek der angelsächsischen Poesie*. The most recent edition of this is by R. P. Wülker. 3 vols. Cassel, 1883-88.

¹⁸ The poems I refer to are *Widsith*, *The Fight at Finnsburg*, *Deor's Lament*, *The Wanderer*, *The Seafarer*, *The Wife's Complaint*, and *The Husband's Message*. It seems likely that some of the *Riddles* are also rather ancient.

¹⁹ My references are to Wyatt's edition of *Beowulf*. Cambridge, 1898.

ories of the age before the coming of history, should be considered as a separate group of sources. It is true, they are interpolated to some extent, but the intruding lines are usually not difficult to detect.

Intimately related to these in metrical form, in legendary foundation and in elements of reflected culture, are the Eddic poems of the North. I have used these to some extent to illustrate the institutional life of earliest England,²⁰ so far as we are able to know it, but it may be necessary to say a word in justification of using them for such a purpose. The study of the runic inscriptions of the North has fixed the limits of a period within which we must place the rise of the Eddas, at least in the form in which the poems have come down to us. For linguistic reasons they cannot be older than the year 800; for religious reasons their period of origin cannot pass the year 1000. Thus these poems are at least two centuries younger than the Anglian lyrics of the heroic age. It must be remembered, however, that Teutonic civilization lived on in the North as nowhere else. No Roman soldier ever trod as a conqueror north of the Baltic. Roman missionaries never came to Norway. Feudalism never got a real foothold in Scandinavia. The influence that came in with commerce, though important, could not have produced any sweeping changes. Most important was the influence that resulted from the viking raids and the consequent contact with southern peoples. But, on the whole, it can safely be said that Teutonic civilization was permitted to develop along its own lines for nearly four centuries after its growth was checked in England by Saint Augustine's mission. Thus it came to pass that the Germanic race revealed itself most clearly and fully in the pre-Christian poetry of the scalds. This expresses the life of a kindred people in much the same stage of development as the English in the seventh century, and it is the poetry not only of a kindred race but of a people with whom the Angles were in almost constant contact from the close of the eighth century or earlier.²¹

²⁰The Old Norse poems have been collected and edited by Vigfusson and Powell in *Corpus Poeticum Boreale*. This work has convenient and fairly accurate translations of most of the poems and I have frequently quoted these in preference to the originals. The Eddic poems are in vol. I.

²¹The occurrence of the word viking in an eighth century gloss (see Sweet's *Oldest English Texts*, 84, uulcing sceadan) and still earlier in *Widsith* (ll. 59 and 80) leads me to think that the Norse incursions antedate 787, the year given in the *Chronicle* as the time when the Norsemen first visited Wessex.

In nearly all the Anglo-Saxon sources, even after the question of chronology has been disposed of as far as may be, there remains the difficulty of interpretation. The same is largely true of the Latin writings, but a careful comparison of contemporaneous works and a study of Anglo-Saxon translations in the Glossaries²² and the works of Alfred and his associates²³ will generally enable us to fix the value of Latin expressions with comparative definiteness. But the problem in the interpretation of Old English poetry is of a different sort: how are we to determine whether a word contains the idea of an actual living institution or of a fossilized one? Germanic poetry makes great use of epithets, largely of a metaphoric character.²⁴ Many of them are such as would appear in the verses of any age, but some have institutional origins; in these a great deal of genuine history is bound up. When the epithet was first used, the component parts, as well as the resulting whole, doubtless represented living realities. A good example of this is the frequently used 'kenning' *eorla dryhten*, lord or leader of warriors, most likely of noble warriors. In the society described in *Beowulf*²⁵ this expression certainly had a meaning; but it is also used by the Chronicler in describing the Battle of Brunanburh in the tenth century, when both the *eorl* and the *drihten* of older days had long belonged to the past; thus while the kennings doubtless contain a good deal of hidden history, it is a history without chronology and without perspective. At times the context gives valuable assistance; but usually we must look elsewhere for light, and the question becomes one of pure linguistics.

Among the sources of this period should also be included the West Saxon laws of Ine and for some purposes those of Alfred. The former date from the early part of the eighth century; but we know them only in the form in which they were reënacted by Alfred one hundred and fifty years later. We may assume that they are in substance the laws that Ine promulgated;²⁶ but to

²² Collected by Thomas Wright in *Anglo-Saxon and Old English Vocabularies*. Wülker's edition of these Vocabularies is the one cited in this study.

²³ See *Bibl. der ang. Prosa* (Grein); also the publications of the Early English Text Society.

²⁴ These were called *kenningar* by the Icelandic poets who carried the use of them to an absurd extent.

²⁵ 1050 et passim.

²⁶ Alfred did not reënact all of Ine's laws. The rest are not extant.

claim that the language has been in every case retained, would not be safe. Whenever the question becomes one of terminology and the use of particular phrases, these laws should be treated as belonging to the age of Alfred.²⁷

From the tenth century, the true Anglo-Saxon period, we have an excellent body of sources, though they are not so good on the subject of the royal court. The reason for this is that the great mass of the literature of that day was produced in monasteries by men who were not interested in the details of court organization. If the king's household in the tenth century had also been a literary center, we should probably know more about the royal surroundings than we do. As examples of the monastic literature of that age may be mentioned the exceedingly important biographies of Saints Dunstan²⁸ and Oswald.²⁹ The Anglo-Saxon Chronicle also belongs to this class. This great source begins in Alfred's reign, and, though very important for earlier history in other respects, as a source of institutional history it cannot be trusted for the period before the reign of Alfred.³⁰ In addition to the Chronicle there is a large body of Old English prose, most of which may be called ecclesiastical. This comprises, among productions of less note, the works of Alfred and his assistants,³¹ the Blickling Homilies,³² the so-called Homilies of Wulfstan³³ and the writings of Ælfric,³⁴ the great master of Old English prose. As these are mainly translations or paraphrases they are often sources of great perplexity, as we cannot know whether the institutions they allude to are native or not. A large body of laws has come down to us from this period and also a

²⁷ Cf. Schmid, *Gesetze*, XXXVII, where a different opinion is expressed; also Steenstrup, *Danelag* (Copenhagen, 1882), 51.

²⁸ *Memorials of St. Dunstan* (Stubbs). London, 1874.

²⁹ *Hist. York*, I.

³⁰ The chroniclers naturally translated the language of their sources into the idiom and terminology of their own day. Hence the allusion to an institution as existing several hundred years before Alfred merely proves that it existed when the Chronicle was composed.

³¹ See *Bibl. der ang. Prosa* and the publications of the Early English Text Society.

³² Edited by Morris and published by the Early English Text Society.

³³ Wulfstan: *Sammlung der ihm zugeschriebenen Homilien* (Napier). Berlin, 1883.

³⁴ *Homilies of Ælfric* (Thorpe). 2 vols. London, 1844-46. Ælfric Society. *Ælfric's Lives of Saints* (Skeat). 2 vols. London, 1881-1900. Early English Text Society. *Bibl. der ang. Prosa*, III. *Angelsächsische Homilien und Heiligenleben*.

considerable number of charters. Some notable poems were produced in this age, though poetic activity was not so great in the tenth century as in the eighth. Asser's biography of Alfred³⁶ also belongs to this period.

Of the eleventh century sources we need consider only such as differ essentially from those of the preceding periods. The great histories that were produced soon after the Conquest, such as Florence of Worcester's *Chronicon*³⁶ and William of Malmesbury's *Gesta*,³⁷ now begin to be useful. They are, indeed, not from the Saxon period, but there can be no doubt that the authors had access to earlier sources that have since perished. Another exceedingly important source dating from Norman times is Domesday.³⁸ As the Survey gives the names and titles of the principal land-holders of Edward's day, we are able to determine to a great extent who the royal officials of that reign were and in what relation they stood to the king. The *Gesta Cnutonis*³⁹ is of particular importance for matters relating to the Danish invasion. But the sources that need to be specially noticed are the Norse poems and sagas and the early Danish histories.

Of Danish histories I have used the *Lex Castrensis* by Sveno Aggonis⁴⁰ and Saxo Grammaticus' *Gesta Danorum*.⁴¹ Sveno's work is an account of the origin of Cnut's famous guard of house-carles, its governing laws, and the changes that had taken place in these. Sveno was the earliest Danish historian and flourished in the second half of the twelfth century. He claims merely to have translated from an earlier account in the vulgar idiom, the authorship of which he attributes to his friend and superior, the famous bishop Absalon of Lund, who obtained his information from King Cnut, the son of Waldemar I.⁴² As Cnut reigned

³⁶*Monumenta Historica Britannica* (Petrie). 1848. Cited as Petrie's *Monumenta*. For Asser's work see pp. 467-98. Stevenson, *Asser's Life of King Alfred*. Oxford, 1903. The credibility of Asser's biography is discussed in Plummer's *Life and Times of Alfred*. Oxford, 1902. Cited as *Alfred*.

³⁷*Florentii Wigorniensis Chronicon et Chronica*.

³⁸*Willelmi Malmesburiensis de Gestis Regum Anglorum* (Stubbs). 2 vols. London, 1887-89.

³⁹*Domesday Book*. London, 1783-1816.

⁴⁰*Gesta Regis Cnutonis* (Pertz). Hanover, 1865.

⁴¹Published by Langebek in *Scriptores Rerum Danicarum*, III.

⁴²Cited as *Saxo*. The references are to Holder's edition. Strassburg, 1886.

⁴³There has come down to us a fragment in Middle Danish usually known as the *Witherlogh*, which may be a copy of the document from which Sveno made his translation. But the oldest extant manuscript is of the fourteenth century,

from 1182 to 1202 the bishop must have produced his summary of the guild-laws some time during the last quarter of the twelfth century.⁴³ Saxo's treatment of the same subject is doubtless an amplification of the same material that Svenno made use of; on important points there is no disagreement between the two accounts. But it is always necessary to distinguish between Saxo's statement of a fact and his explanation of the same; and in his ornate and somewhat pompous Latin there is a good deal of ambiguity.⁴⁴

The distinctly Norse sources are poems and sagas. Of course the former are by far the more valuable, as there is every reason to think that they are contemporary with the events alluded to. Unfortunately we have but a few fragments of the court poetry of the eleventh century that can be used in a study of this sort. To what extent the sagas may be used for historic material is a much discussed question that cannot be fully dealt with here. All depends on the nature of the saga, the sources used, the date of composition and the time of the events recorded. The sagas dealing with events after 1100 have all the presumption in their favor; those professing to deal with earlier periods may properly be questioned. The saga is a sort of historical romance told in a terse, simple style which is peculiar to this form of literature. In a sense it is based on tradition, but not on tradition as that word is commonly understood. The Njaal's Saga furnishes abundant illustration of how carefully certain matters were committed to memory and with what precision as to form the unwritten legal documents had to be reproduced.⁴⁵ The historic sagas are generally based on scaldic verses and these are frequently quoted in the text. The scald was a professional his-

and, though it agrees in the main with the *Lex Oastrensis*, we cannot be sure that it is a copy of Absalon's work. See Holberg, *Dansk Rigstingning* (Copenhagen, 1889), 22, 33. Holberg believes that aside from a few minor interpolations the Witherlogh is substantially the work of the great bishop.

⁴³It is of course possible that Absalon may have written his account before Cnut became king; but Svenno's translation cannot be placed earlier than 1182, nor can it have been produced much later, as Saxo, who probably survived Svenno, is thought to have died in 1204.

⁴⁴For further discussion of the Danish sources see chapter VII.

⁴⁵See the *Story of Burnt Njaal* (Dasent's translation). Edinburgh, 1861. It may be objected that the Njaal's Saga is largely fictitious; but even if this be granted, the story still shows what the age demanded in the way of memorizing laws and formulas.

torian: his task was to single out the great events in the career of his patron and tell them in song at the great festivals and on other occasions.⁴⁶ The internal evidence of the sagas themselves is sufficient to show to what a great extent these verses were used in the composition. In addition we have Snorre's testimony: 'At King Harold [Fairhair's] court⁴⁷ there were scalds, and men still know their lays as well as the lays sung of the kings that Norway has had since that day. And we have trusted most to those things that are told in the songs that have been sung in the presence of the chiefs themselves or of their sons. . . . For it is the custom of the scalds to praise him the most in whose presence they are, but no one would dare to attribute to him deeds that he had never performed; for all who heard it would know that it was mere fable and fiction, and there would be mocking rather than praise in that.'⁴⁸

It has been my purpose to use sagas only where they find support in documents more nearly contemporaneous and refer to institutions concerning which something might be known in the North.⁴⁹ Such an institution is the corps of house-carles, which, though in a sense peculiarly English, was Norse in spirit and perhaps also in form and origin. On the whole, however, on the subject of English institutions the sagas cannot be said to throw very much light.

Turning from the sources to the writings of modern historians, we shall find but few that present more than a superficial view of the English court. The subject is treated in nearly all the general works on English history, but the discussions are usually brief, sometimes limited to a few lines, and rarely show that the author has made an independent study of the sources.⁵⁰ The

⁴⁶The list of these singers is a formidable one: Finnur Jonsson has collected the names of more than one hundred, of whom some, indeed, are mythical. Jónsson, *Den oldnorske og oldislandske Litteraturs Historie*. Copenhagen, 1894-1901. Cited as *Litteraturhistorie*.

⁴⁷Harold ruled according to generally accepted accounts from 860 to 930.

⁴⁸Preface to *Heimskringla*. Snorre's dates are 1178-1241.

⁴⁹In this study I have made some use of the *Knytlingasaga* and the *Jomsvikingasaga*. These are placed among the later compilations; but as there are several versions of the latter differing materially in language, it is thought that they must all have been based on some earlier work not extant. See Jónsson, *Litteraturhistorie*, II, 664.

⁵⁰As these works will be frequently cited in the following chapters, no page references are given at this point.

earlier writers like Palgrave⁵¹ and Lappenberg⁵² display a very uncritical use of documents, particularly of charters, and their conclusions are not to be relied on. By far the best work is that of Kemble,⁵³ indeed, it can hardly be said that the discussion has been advanced much since his day. Kemble's conclusions are frequently mere conjectures, but in his conjectures he often comes surprisingly near the truth. Stubbs,⁵⁴ Freeman,⁵⁵ and Green⁵⁶ apparently follow Kemble. Freeman seems to have made an extensive study of the sources on this subject, but his efforts do not always lead to results and his interpretations are often incorrect. Green has a comparatively long discussion of the king's household in Saxon times, but the whole seems more like the product of imagination than of sober study. Ramsay's treatment of the subject is more satisfactory, though meager and open to criticism on several points.⁵⁷ There are also a few writers who, though they do not discuss the general question, give valuable information on some particular phase of it. Such are the studies in Anglo-Saxon society by Earle,⁵⁸ Leo,⁵⁹ Maitland⁶⁰ and Seebohm.⁶¹ Of great value are also the discussions of general Germanic society in the works of Brunner,⁶² Müllenhoff,⁶³ von Maurer⁶⁴ and Waitz.⁶⁵ Some of Round's essays⁶⁶ are also useful. Plummer's *Life of Alfred* is particularly important for his discussion of the literature belonging to the reign of that king.

Writers on Scandinavian history, especially students of the viking age, find frequent occasions to deal with Anglo-Saxon problems. First among these should be mentioned the Norse

⁵¹ *The Rise and Progress of the English Commonwealth*. London, 1832.

⁵² *History of England* (Thorpe's translation). London, 1881.

⁵³ *Saxons in England*.

⁵⁴ *Constitutional History of England*.

⁵⁵ *Norman Conquest*.

⁵⁶ *Conquest of England*.

⁵⁷ *The Foundations of England*.

⁵⁸ *Land Charters and Saxon Documents*. Oxford, 1888.

⁵⁹ *Rechtshandlungen Singularum Personarum*. Halle, 1842.

⁶⁰ *Domesday Book and Beyond*. Cambridge, 1897.

⁶¹ *The English Village Community*. London, 1884. Also *Tribal Custom in Anglo-Saxon Law*. London, 1902.

⁶² *Deutsche Rechtsgeschichte*.

⁶³ *Deutsche Altertumskunde*, IV. Berlin, 1900.

⁶⁴ *Hofverfassung*. Erlangen, 1862.

⁶⁵ *Deutsche Verfassungsgeschichte*.

⁶⁶ *Feudal England*. London, 1895. Also his discussion of the Officers of Edward the Confessor in *Eng. Hist. Rev.*, XIX, 90-92.

historian Munch,⁶⁷ whose knowledge of the later centuries of the middle ages was so extensive that his opinions are not to be lightly disregarded. The question of Danish influence on Old English institutions has been made the subject of a series of special studies by Johannes C. H. R. Steenstrup, who views the problem from the Scandinavian side, and whose conclusions frequently differ from the opinions commonly held. In the main, however, they are sound, and Steenstrup's writings, especially his volume on the Danelaw,⁶⁸ are of great value to the student of English constitutional development.

While the effort has been to look at the royal household primarily from an English point of view, the possibility of foreign influences has been constantly kept in mind. The closing chapter is largely devoted to a comparison between the English court and related or contemporary households on the Continent. In studying the Continental courts I have made no extensive use of the sources, but have drawn for information on the works of Brunner, Keyser,⁶⁹ Luchaire,⁷⁰ Viollet⁷¹ and Waitz. Owing to lack of space this comparison has been carried out along the more general lines only; but enough has been done, I believe, to indicate with some definiteness the position of the Old English court among its Germanic neighbors, what it owed and what it contributed to the royal households over the seas, and what it left as a heritage to its Norman successor.

⁶⁷Munch's massive work, *Det norske Folks Historie*, is still the greatest source of information on Norse mediaeval history.

⁶⁸*Danelag* (Normannerne IV).

⁶⁹*Efterladte Skrifter*. 2 vols. Christiania, 1867.

⁷⁰*Histoire des Institutions Monarchiques*. Paris, 1891.

⁷¹*Histoire des Institutions Politiques de la France*. 2 vols. Paris, 1890-98.

CHAPTER II.

THE EARLIER COMITATUS IN ENGLAND: THE GESITH.

The history of the royal household begins with the history of kingship. Between these two institutions there is an essential and intimate relation which is too obvious to need discussion. Not only do they correspond as to origin, but also as to nature and course of development. Early Teutonic kingship was primarily of a military order; first of all the king was a war-chief.⁷² It is natural, then, that his immediate surroundings should partake of the same martial character. Close to the royal person stood a band of chosen warriors, bound by the most solemn pledges to defend their lord and to die with him if he fell as a hero should. This was the *comitatus*, the earliest princely household among the Teutonic peoples.⁷³

This peculiarly Germanic institution seems to have reached its full development, in a military sense, as early as the times of Tacitus. Its subsequent growth was generally away from the original idea. The privilege of maintaining a *comitatus* was not limited to the king; it was shared by the *principes*,⁷⁴ at least till after the period of the migrations. Perhaps the institution is also much older than kingship. Snorre tells us that the kings 'were formerly called *drottnar*, their wives *drottningar* and their household *drott*.'⁷⁵ Analogous terms are found in other Germanic dialects with much the same significance. Parallel to the Old

⁷²Cf. von Amira, *Recht*, in Paul's *Grundriss*, II, 2, 126.

⁷³It is not the purpose of this chapter to present a discussion of the *comitatus* in general, but to trace, as far as can be done, the further development of the institution after its introduction into England. For the general subject see Brunner, *D. R. G.*, I, 136-43; Müllenhoff, *Deutsche Altertumskunde*, IV, 255 ff.; Sars, *Udsigt over den norske Historie*, I, 95 ff.; Stubbs, *O. H.*, I, 22 ff., 166, ff.; Walts, *D. V. G.*, I, 286 ff., 371-401.

⁷⁴Tacitus, *Germania*, 13.

⁷⁵*Ynglingasaga*, 20.

Norse *drottinn* is the Anglo-Saxon *drihten*; both are archaic remains frequently found in poetry though seldom in prose. In both the *dominus* idea is always present;⁷⁶ but that they originally had a martial coloring appears from the meaning of related Gothic words, all of which relate to warfare.⁷⁷ We can hardly escape the conclusion that *drihten* originally meant a war-lord.

The use of such an expression as *eorla drihten*,⁷⁸ lord of earls, which often occurs in Old English poetry, might lead us to conclude that the members of the *comitatus* were once called earls. The word *eorl*, or some related form is found in several of the Teutonic dialects, sometimes used in the sense of man,⁷⁹ sometimes signifying a royal official corresponding to the mediaeval *comes*,⁸⁰ but more frequently suggesting a member of the martial aristocracy.⁸¹ The last meaning, warrior, is the most common in the earliest Norse sources, of which the most important for present purposes is the Lay of Rígh, a poem describing early Northern society.⁸² It is the poet's purpose to glorify kingship, the new Norse kingship of Harold Fairhair. To do this he describes and accounts for existing social classes of which there are three: thralls, churls and earls.⁸³ The oldest is Thrall (*þræl*). His fare is poor and his labor hard. Next comes Churl (*Karl*), who occupies a higher plane of culture and devotes himself to agriculture. Youngest is *Iarl*. 'His hair was yellow, his cheeks

⁷⁶ Christian writers frequently apply them to the Lord, perhaps because they contain the fullest idea of personal relationship. See the so-called *Cadmonian Hymn*.

⁷⁷ In Ulfila's Bible *ga-drauhits* is used where the English version has soldier. From the same root are *draughtinassus*, *draughti-witop*, warfare and *dranhitnon*, to make war.

⁷⁸ See, for example, *Beow.*, 1050.

⁷⁹ It frequently occurs with this meaning in the Old Saxon poem *The Heliand*.

⁸⁰ Thus in later Old English and Old Norse documents. See Cleasby and Vigfusson, *Icelandic Dictionary*.

⁸¹ In the Old Northern runic inscriptions (thought to be from the seventh century) the title *erilar* or *erliar* occurs not infrequently; it is usually in apposition to the name of the one who caused the runes to be written. Bugge translates it war-chief. See Bugge, *Norges Indskrifter* (Christiania, 1891), 100 ff.

⁸² *C. P. B.*, I, 235-42. As a document for the history of culture this poem is of uncommon value and interest. Finnur Jónsson, the most recent critic of Old Norse literature, believes that it dates from about 892. *Litteraturhistorie*, 186 ff.

⁸³ This division into three social classes, servile, agricultural and military, appears to be common to the Germanic tribes. See Paul, *Grundriss*, II, 2, 111 ff. There are clear traces of it in Tacitus' *Germania*, especially in chapters 18, 14, 15, 24, 25, 26.

were rosy, his eyes keen as a young serpent's. . . . He began to brandish the linden [shield], to gallop his horse and fence with the sword. He began to waken war, to redden the field and to fell the doomed. He won lands; he ruled alone over eighteen households; he began to deal out wealth, and endow his people with treasures and costly things, with fine-ribbed steeds; he scattered rings and hewed great rings asunder [among them].⁸⁴ To any one familiar with Old English poetry, this description of the activities of the original *eorl* must seem familiar both in thought and in terms. The hall, the extended domains, the steed, the arms, the delight in warfare, the *comitatus* and the ring-giving are met with repeatedly in Anglian literature.⁸⁵ And it seems clear that the lay does not describe a mere warrior, but a Tacitean *princeps*, that is, a chief who surrounded himself with a company of youths.⁸⁶

As *eorl* is the Saxon equivalent of the Norse *iarl*, we should expect to find the significance of the two words to be the same. The evidence on this point is, however, not very satisfactory. With the word *eorl* that came in with the viking-raids, we have nothing to do; consequently, we are limited in our investigation to the very earliest sources, the heroic and Cædmonic poetry and the earlier legislation.

A striking peculiarity of Germanic law is the persistent use of alliterative formulas: 'sac and soc,' 'toll and team' will serve as examples of Anglo-Saxon usage. With these may be classed the rhyming formula *eorl and ceorl*. This interesting combination appears for the first time, perhaps, in the Laws of Alfred.⁸⁷ As there used, it suggests a classification of men, though not a very substantial one; it looks more like a fossilized survival of an earlier age.⁸⁸ Evidently the *earl* as a living fact antedates Alfred's code. But in the earlier Kentish laws he appears as an

⁸⁴Vigfusson's translation with slight changes (ll. 147-54).

⁸⁵So striking is the similarity that some have believed it must have been produced somewhere on the "Western Islands." See *O. P. B.*, Introd., LXX; Bugge, *The Home of the Eddic Poems* (Schofield's translation), Introd., XXV.

⁸⁶*Germania*, 13, 14.

⁸⁷C. 4, 2.

⁸⁸This supposition is strengthened by the fact that the same formula, 'churl's land and earl's land' is found in the *Grágás*, an old Icelandic law, the extant manuscript of which must have been written soon after 1217 (Vigfusson). But Iceland never had an *earl* or *jarl* before 1259. The phrase in this case is clearly a 'fossil.' See *O. P. B.*, Introd., XL.

active reality.⁸⁹ The Laws of Æthelbirht clearly show us a double classification of freemen into earls and churls; the same is true of the dooms of Hlotar and Eadric. The earl enjoys a higher wergeld than the churl.⁹⁰ Higher protection is given to his home and his servants.⁹¹ It is manifest that the earls of early Kent constituted a privileged class.⁹²

It is also evident, as a study of the early Anglian poetry will show, that this aristocracy was of a military character. Its members lived in fortified strongholds, 'burgs,' while the common freeman had to be satisfied with a less pretentious enclosure, *edor*, about his buildings.⁹³ The king also lived in a *burh*.⁹⁴ Eorl is rarely used in the sense of man merely; at any rate the man is of an exalted station. But in almost every case the usage of the term suggests the *comitatus*; sometimes it is applied to the chief, sometimes to the members.⁹⁵ The patriarchs with their large households were looked on as eorls by the author of the Genesis.

⁸⁹The earliest of these is thought to date from the beginning of the seventh century. *The Laws of Hlotar and Eadric* are usually dated ca. 685.

⁹⁰*Laws of Hlotar and Eadric*, 1, 3. These dooms provide for the punishment of a serf (eane) who should slay a man whose wergeld was three hundred scillings, or one whose worth was only one hundred scillings. The ratio of the wergelds thus becomes one to three. In my interpretation of these chapters I follow Liebermann; Schmid and Thorpe have somewhat different renderings. Cf. Seebohm, *Tribal Custom in Anglo-Saxon Law*, 468.

⁹¹The honor of an earl's brel was worth twelve scillings; that of a churl's brel was valued at six. Slaughter in the earl's tun demanded a payment of twelve scillings; breaking into a 'man's' tun, half that amount. *Laws of Æthelbirht*, 13, 14, 16, 17.

⁹²With regard to the classes of early Kentish society, Seebohm concludes that the ceorl stood on the same level as the later twelve-hynde-man of the Wessex laws, and that the earl consequently occupied a considerably higher plane than even the later thegn. *Tribal Custom in Anglo-Saxon Law*, 494-95.

⁹³See *Laws of Æthelbirht*, 27; fines for 'edor-breaking.'

⁹⁴*Beow.*, passim.

⁹⁵In *Widsith*, which probably contains elements of greater antiquity than any found elsewhere in Old English poetry, eorl appears as a synonym for 'theoden' which in its most general sense means chief, but in this case appears to mean king (11-13). In *Deor's Lament*, which is also of a very early date, the word is applied to the members of the lord's following (33), but also to Weland, one of the saga-heroes alluded to (2). In the next line Weland is said to have sorrow and longing as his 'gesiths': 'hæfde him to gesippe eorge and longap' (3). It is, indeed, possible that gesith here means companion merely; but it is more probable that the singer was thinking of the comitatus and the court. In the beautiful description of the ruined burg and the death of the doughty ones, the eorl is represented as 'hiding' his men in the grave. All are gone, the chief is the last survivor. *The Wanderer*, 77-84. The fair-haired queen in the riddle is the daughter of an eorl. *Riddle LXXVIII*. (No. 80 in Grein-Wülker.) In another riddle (IX), we are told that eorls live in burgs.

Especially is this true of Abraham,⁸⁶ and it must be admitted that three hundred and eighteen men make up a very respectable *comitatus*.⁸⁷

While the proof cannot be considered absolute, the evidence, such as we have it, points to the eorl as not merely a warrior but a lord of warriors in the peculiarly Teutonic sense.⁸⁸ The Norse parallels, the privileged position of the eorls in the laws, their princely position in the early poetry, the martial atmosphere surrounding the title, the fortress, the distribution of wealth—all these considerations support this conclusion.⁸⁹ Remarkable is also the ease and naturalness with which the title, after a long development away from its early Germanic significance, suddenly reappears in its original sense. With the Norse invasions of the ninth century the eorl resumes his ancient place. In the account of Alfred's wars we read of a number of eorls,¹ leaders of the enemy, Danish and Norwegian 'jarls.' But it will hardly do to call these vikings territorial barons: there is no evidence that such dignitaries existed among the Danes,² and in those very

⁸⁶Ll. 1710, 1844, 1887.

⁸⁷Abraham's three confederates in the famous expedition for the relief of Sodom are also called eorls in the *Genesis* (2045). Cf. *Book of Genesis*, 14:22. Lamech was a ruler and an eorl (1228). Of Jared it is said that long afterwards he distributed gold to men; 'the eorl was noble, a plous hero, and the chief was dear to his kinsmen' (1181-83). Among other eorls the poet names Haran (1710), Lot (2086, 2444), Eber (1646) and Isaac (2766). Several other patriarchs bear the title in the *Höllenfahrt*. In *Asariah* (181) Nebuchadnezzar is called an eorl.

⁸⁸For the subject of eorlship see Allen, *Essays and Monographs*, 293-99; Freeman, *N. C.*, I, 55-56; Kemble, *Sax. in Eng.*, I, 135-36; Lappenberg, *Hist. of Eng.*, II, 382; Stubbs, *C. H.*, I, 86; Walts, *D. V. G.*, I, 176-77. Nearly all these writers consider the eorls as forming an ancient hereditary nobility possessing certain valued privileges; especially is the possession of extensive lands emphasized. Lappenberg and Allen, however, deny this and hold that the eorls were officers appointed by the crown. Walts rejects the opinion expressed above that the eorl was a leader of a *comitatus*. *D. V. G.*, I, 177. Cf. Leo, *Rectitudines*, 160.

⁸⁹Cf. Leo, *Rectitudines*, 160, where a similar view is presented.

¹*A.-B. Chron.*, 871.

²Allen, in his contention that the eorl was an appointive magistrate, depends largely on supposed Scandinavian analogies. "It may be assumed therefore that the eorls of Kent were identical with the Jarls of Denmark and Norway. Now, the Scandinavian Jarls were not an hereditary class of noblemen, but were officers or magistrates appointed for life or pleasure." *Essays*, 294-95 Munch and Keyser are quoted as authorities. To this it should be remarked that while such is the opinion of these writers with regard to the situation in the later middle ages, Munch, at least, holds that there was a hereditary earlship in the early viking age. *N. F. H.*, I, 1, 111. See also Sars, *Udsigt over den norske Historie*, I, 185. As to the local government of early Denmark, all we can say is that it seems to have been in the hands of magistrates appointed by the king. Sars, *Udsigt*, I, 189.

years the 'jarls' of Norway were at home struggling for their independence against the conquering ambition of Harold Fair-hair.³ We shall have to regard the eorls of the Alfredian Chronicle as leaders of a personal following only, such chiefs as Snorre describes in another connection as 'sea-kings who controlled large forces but had no land.'⁴ However, when one of these vikings settled with his followers in a certain locality, his authority would become territorial. There were such rulers in the Danelaw all through the tenth century,⁵ but the eorl did not become an Anglo-Saxon official before the reign of Cnut.

While it doubtless was the privilege of the original eorl to maintain an armed following, we need not assume that all the members of this martial nobility made use of this right.⁶ The sources show, and most clearly, that the development was rapidly away from the *comitatus* in its primitive form. When we enter the period of true English history, the substance has largely passed away. Tacitus observes that warfare is a condition necessary to the existence of a large following,⁷ and this condition was probably present in Northumbria in the seventh and eighth centuries, but the same can hardly have been true of Kent.⁸ And even beyond the Humber the fortunes of earlship must have found an early decline. As we follow the line of the sources forward, less emphasis is placed on military prowess and continuously more on wealth.⁹ By the close of the seventh century the term eorl has practically disappeared from the legal sources,¹⁰

³The period of the consolidation of Norway is generally given as 864-74.

⁴*Ynglingasaga*, 84. Snorre adds that 'he alone was thought to have full right to be called a sea-king who never slept under sooty rafter and never drank at the corner of the hearth.'

⁵In 949 three eorls with Danish names, Urm, Uhtred and Scule, signed one of Eadred's charters. *K. O. D.*, No. 424. Apparently two other eorls, Andcal and Grim, are also among the testes.

⁶Such might be called eorlcund. In the *Laws of Æthelbriht* (75) there is mention of eorlcund widows. Fines for slaying eorlcund men are specified in the dooms of *Hlotar and Eadric* (1).

⁷*Germania*, 14.

⁸The limited area of this state and its relative freedom from invasions, except as it might be attacked by its Mercian or Saxon neighbors, could not be conducive to the continuation of such establishments.

⁹Even such an unwarlike man as Lot is called an eorl by the author of the *Genesis*, who probably had his possessions and his lineage in mind.

¹⁰The term eorlcund is used in *Hlotar and Eadric's* laws; but in *Wihtræd's* legislation, which is supposed to date from the following decade, *gesithcund* is used instead (c. 5). The word eorl appears rarely in the Wessex laws and then only in formulas. The eorl of the tenth and eleventh century documents

gesith and gesithcund taking its place. In the poetry of the period this change in terminology is not so noticeable. The two titles, eorl and gesith, appear side by side from the very beginning, at first rather sharply distinguished, but soon employed as practically synonymous terms.

The Anglo-Saxon word *gesip* originally meant a traveling companion,¹¹ and this significance it never wholly lost.¹² But it soon came to be used in the technical sense of member of some lord's *comitatus*. The transition is natural: the way is the war-path, the devoted companion, the gesith.¹³ The term is used freely by the Anglian poets, who describe the gesiths as warriors, the companions of some mighty war-lord, living at his hall, or at least partaking of his liberality on certain great occasions.¹⁴

The relationship existing between the drihten or eorl and his gesiths was the highest and holiest that the Teutonic mind could imagine. It was the hero's delight in life, his hope after death. The scenes of earth were reënacted in the halls of the Anses, where the brave ones fought and Woden rewarded his followers

is, as has already been shown, a new official of Norse origin whose English history begins with the viking invasions. Cf. Stubbs, *C. H.*, I, 169.

¹¹*Gesip* is derived from Old-Germanic *sinpa*, way or journey. This appears in Gothic as *sinpa* and in Anglo-Saxon as *sip*, journey, time. The Gothic *ga-sinpa* like the Anglo-Saxon *gesip*, means primarily a companion on the way. See Kluge, *Etymologisches Wörterbuch*, 113.

¹²In *Solomon and Saturn* (346-47) weeping and laughter are called each other's gesiths.

¹³Thus we have the Old High German *gisindl* and the Lombard *gasindl*. The latter composed the king's special following as appears from the *Laws of Liutprand*, LXII. Cf. Gengler, *Germanische Rechtsdenkmäler*, Glossar; Brunner, *D. R. G.*, II, 260 ff. With the same restricted significance we have the obsolete Danish term *hof-sinde*, a court official.

¹⁴In *Widsith* eorl is used as synonymous with theoden, chief, prince; gesith as explanatory of *innweorud*, house-troop (110-11). Attention has already been called to the use of these terms in *Deor's Lament*. That there were gesiths at the royal court is shown in the Gnostic Verses: 'Good gesiths shall encourage the young etheling to warfare and to ring-giving.' *Versus Gnomiot*, 14-15 (Cottonian). King Higelac dwelt at home with his gesiths. *Beow.*, 1923-24. Dearly beloved gesiths accompanied Beowulf to the last great encounter (2516-18). This idea of companionship in warfare persisted as late as the time of Alfred. We read in his *Metra* (XXVI, 19-20) that 'the lord of the Greeks dearly purchased the Trojan burg with his excellent gesiths'. There were gesiths in the Jewish host that routed Holofernes' forces (*Judith*, 199 ff.) and in Abraham's company when he rescued Lot (*Genesis*, 2066-67). In the *Husband's Message* (31-34), hope is expressed that they two (husband and wife) may soon again distribute 'nalled' rings among their warriors and gesiths. The warriors who were surprised in the famous hall at Finnsburg were gesiths. *The Fight at Finnsburg*, 41-42.

with gold.¹⁵ The general nature of the English *comitatus* seems to have been the same as of that described by Tacitus: there is the same liberality on the part of the lord, the same devotion on the part of the men.¹⁶ That this devotion was more than a mere sense of duty appears from a passage in the *Wanderer*, perhaps the most artistic of all the Old English poetical productions.¹⁷ The memories of the minstrel turn not to valor and warfare but to former joys in his lord's hall. In his dreams 'it seems to him that he is kissing and embracing his lord and laying his hands and his head on the chieftain's knee, as he formerly did in days of yore, when he enjoyed the gift-stools.'¹⁸ That the members of the *comitatus* were as dear to their chief appears from many considerations, especially the oft-recurring phrase *swæse gesithas*, dear gesiths. The members of the same following were no doubt also bound to each other by close ties. The runic inscription on the so-called Tunē-stone¹⁹ seems to record the fact that the fifth century *comitatus* was a law-bound guild.²⁰ How this personal bond, this intimate relationship between the chief and the warrior, was formed and how long it endured cannot be answered definitely from Anglo-Saxon sources. It would seem from

¹⁵*C. P. B.*, I, 227: *Biðjom Herjarföður i hugom sitja han geldr og gefr goll verðungo.*

¹⁶The heroic poetry from *Beowulf* to *Byrhtnoth* (the *comitatus* seems to have experienced a revival after the viking incursions had begun) is a splendid commentary on these two virtues. The spirit of loyalty is also illustrated in the story of *Cynewulf* and *Cyneheard*. Even after the king was known to be slain, his men refused to listen to the assassin's promises of life and gifts; 'but they continued fighting until they all lay dead save one, a British hostage, and he was severely wounded.' *A.-S. Chron.*, 755.

¹⁷This poem is heathen in thought and sentiment if not in point of time. The opening and closing lines are later additions by some Christian singer. Cf. *Wülker, Grundriss*, 205.

¹⁸Ll. 41-45: þinced him on mode, þæt he his mondryhten

clippe and cysse and on cneo læge
honda and heafod, swa he nwillum ær
in gear-dagum gief-stolas breac.

¹⁹So named from its location near Tunē church in southeastern Norway. The rock is roughly hewn in the form of an obelisk and is of about the height of a man.

²⁰The inscription which archeologists date about 500 reads as follows: "Ek Wīwar after Woduride witada-halaiban worahto r[unor]"; in free translation, 'I, Wīwar, in memory of Wodurid, my intimate companion, wrought these runes.' The word that I translate intimate companion is *witada-halaiban* of which the first part is probably related to Gothic *witōþ*, law, and the second to Gothic *gahlaiba*, loaf-sharer or comrade, but used by *Ulfilas* in the sense of soldier. *Philippians*, 2:25. The whole term probably means one belonging to a law-bound guild of warriors. Cf. *Bugge, Norges Indskrifter*, 17.

Tacitus' account that the *gesith* entered the *comitatus* while yet a mere youth, and certain allusions in the Anglian poetry point in the same direction.²¹ But, while the institution is usually spoken of in connection with noble youths, no class of freemen seems to have been excluded from membership²² and the relationship might apparently continue into old age.²³

Such was the *gesith* as the poet saw him: a warrior devoted to a warlike lord; a hero whose joys were the battle and the banquet. The laws and the Latin sources, however, the charters, the histories and the 'lives', give us a somewhat different picture. In the Latin documents we frequently meet the term *comes*. This, in the tenth century glossaries, is translated *gesip*, and *comitatus* is rendered *gesipræden*.²⁴ But it is not always clear that *comes* in the sense of *socius* is not meant.²⁵ In an eighth century vocabulary *gesith* is used as the Saxon equivalent of *optimas*,²⁶ in this case, then, the *gesith* is not considered as a warrior or a member of some military household, but as one of the powerful men of the realm. This is exactly in line with the use of the word in the writings of Bede, who wrote in the same century. One looks in vain through the Ecclesiastical History for any use of the term *comes* in the later sense of count or earl.²⁷ All we can safely say of Bede's *comites* is that they were men of power, wealth and

²¹Beowulf came to Hrethel's court at the age of seven. From that time on he seems to have been treated as a member of the following. The king gave him entertainment and costly gifts (2428-31). The Wanderer also feasted with his gold-friend in his youth (35). According to the rules of Jom no one younger than eighteen should be admitted to the brotherhood (*Jomervibingoesaga*, 24); an exception was made, however, in the case of Vagn, who became a member at the age of twelve (32). But Vagn had already killed several men and had proved himself a worthy viking (31). Cf. *Germania*, 13; Müllenhoff, *Deutsche Altertumskunde* IV, 262.

²²Among the avengers of Byrhtnoth was an 'aged churl.' Judging from the context we should consider him a member of the ealdorman's martial following. *Battle of Maldon*, 256. Waltz believes that even serfs might become *comites*. *D. V. G.*, I, 378.

²³Old *gesiths*, *eald-gesithas*, are mentioned in *Beowulf* (853). In the *Battle of Maldon* we read of an *eald-geneat*, old companion, who unquestionably was a member of Byrhtnoth's *comitatus* (810).

²⁴*Vocab.*, 239:3, *fida comes*, i. *fidells*, *getreowa gesitha*; 253:2, *comes*, *gesith*, 206:21, *comitatus*, *consecutus vel gesipræden*.

²⁵In a tenth century gloss *gesith* is also used to translate *cliens*: *cliens*, i. *socius*, *begn*, *gesitha*. *Ibid.*, 205:34.

²⁶*Ibid.*, 35:4.

²⁷The same remark applies to *dux*. Of the *duces* we can affirm only that they were military leaders. See H. E., I, 15, 16; II, 13, 20; III, 3, 24; IV, 13, 26; V, 10. Alfred calls the *dux* a *heretoga*, host-leader, or *latteow*, guide.

social standing. Alfred in his translation distinguishes very carefully between *comes* (*socius*) meaning a mere companion and the same term as applied to an order of men. Augustine's *socii* were *geferan*,²⁸ the same is true of the companions (*comites*) of Edwin's queen.²⁹ But *comes regis* is translated *gesith*.³⁰

The *comes* of the eighth century seems to have spent very little time, if any at all, in his lord's household. He had attained a respectable social position and kept up an establishment of his own; he even returned former favors by entertaining the king.³¹ Even where the more specific title *comes regis* is employed, there is no indication that the person in question was regularly entertained at the royal vill.³² The Anglian *gesiths* had, by the time when Bede wrote, become great land-owners:³³ nearly all that we read of had villas, and some even had churches on their estates.³⁴ How extensive these possessions were cannot be known. It is, of course, possible that the *comites* had large military followings on their estates, but the evidence for such is wholly wanting. Not even the suggestion of a *gesith's comitatus* appears in the Ecclesiastical History.

The institution of *gesithship* naturally gave rise to a privileged class, the *gesithcund*.³⁵ To what extent we are to distinguish

²⁸I, 25.

²⁹II, 9.

³⁰IV, 22.

³¹Bede tells of a king who incurred episcopal wrath by dining at the home of an excommunicated *comes*. *H. E.*, III, 22.

³²King Oswin was slain at the home of Hunwald, "his *gesithes*," where he had concealed himself. *Ibid.*, III, 14; cf. IV, 22. We are told that Cuthbert once healed the servant of a "*comitis Ecgfridi regis*," Bede, *Opera*, II, 99. The context clearly indicates that the *comes* had his own home. It is interesting to note that the Frankish antrustions (some of them at least) had homes of their own. The *Salic Law* (XLII) provides that the fine for slaying a freeman "in truste" shall be three times as large as the penalty for murder in the freeman's own home.

³³When Colman left England he went to a Scotch island and bought a small part of it "a *comite ad cuius possessionem pertinebat*." Alfred's version reads: "æt sumum *gesithes* þe þæt land ahte." *H. E.*, IV, 4.

³⁴*Ibid.*, V, 5; . . . vocatus ad dedicandam ecclesiam *comitis* vocabulo *Addl*. See also *Ibid.*, V, 4.

³⁵That the *gesiths* comparatively early became a class appears from the occurrence of such compounds as *gesithbound*, *gesithman* and *gesithwif*. *Gesithbound* as used in the earlier laws clearly indicates rank. See *Laws of Wiltred*, 5; *Laws of Ine*, 50, 51, 63, 68. The word appears in several chapters of Ine's dooms equivalent, it seems, to the *eorlcund* of the Kentish laws. That a *gesithwif* was a lady of rank appears from a statement in Gregory's *Dialogues* concerning "a certain noble *gesithwif*"—"sum *æþele gesithwif*." *Bibl. der ang. Prosa*, V, 71. Cf. Seebohm, *Tribal Custom in Anglo-Saxon Law*, 369.

between *comites* and 'gesithcundmen' cannot be known; but all belonging to the latter class did not enjoy the possession of great estates. We read in Ine's Law that 'if a gesithcundman who is a landowner neglect the host, he shall pay one hundred and twenty scillings and lose his land; one who is not a landowner, sixty scillings.'³⁶ From this we are also justified in concluding, that, before the close of the seventh century, this class, so supremely martial in its origin, had lost its passion for warfare.

How the *comes* originally came into possession of his lands can only be conjectured: but it seems reasonable to suppose that the chiefs of the Angles and Saxons, after they had risen to kingship, found distribution of conquered and confiscated lands the best way to provide for a large and growing *comitatus*.³⁷ Later grants were also made from time to time.³⁸ That it was customary to give gifts to members of the royal household is very well known. Arms, horses, rings and fragments of rings were commonly given.³⁹ The king of the Goths gave Widsith a ring which he in turn gave to Eadgils, his 'protecting lord, a reward to the beloved one, the lord of the Myrgings, for the lands he gave me, my ancestral possessions.'⁴⁰ Another bard, in a song almost as ancient, laments that a song-skilled rival had taken the land-right that his lord had formerly given him.⁴¹ Beowulf gave Wiglaf 'the wealthy dwelling-place of the Wægmundings with every

³⁶C. 51. Gif gesithcund man land-agende forslitte fierd, geselle CXX Scill. and þolle his landes; unland-agende LX Scill. Cf. Seebohm's interpretation of this chapter in *Tribal Custom in Anglo-Saxon Law*, 391. See also Earle, *Land Charters*, Introd., LXXX.

³⁷Wholly different from this view is that of Earle, who believes the *gesiths* to have been "the original captains and officers of the Conquest of Wessex, men of eorlsc birth, the co-adventurers who organized and led the invasion, and who obtained a share of the conquered soil duly proportionate to their services or contributions to the successful venture." *Land Charters*, Introd., LXX. To this it may be sufficient to remark, that we do not know the plan or process of the Saxon invasions. Seebohm, the most recent writer on this subject, believes that the gesithcundman was placed over a certain number of hides, twenty, ten or fewer, "under the special obligation to provide food-rent by settling tenants upon the land." *Tribal Custom in Anglo-Saxon Law*, 422.

³⁸Such was the grant of Æthilbald of Mercia to his comes Æthelric, son of the former king of the Hwiccas. *K. C. D.*, No. 83. Another of Æthilbald's grants is made to his comes Wihtræd. *Ibid.*, No. 101. In 736 the same king gave lands (this time for church purposes, however,) to his 'honored comes Cyneberht.' *Ibid.*, No. 80.

³⁹See Waltz, *D. V. G.*, I, 376; Kemble, *Sax. in Eng.*, I, 183.

⁴⁰Ll. 98-96.

⁴¹*Deor's Lament*, 39-41.

folk-right as his father possessed it.⁴² From these passages we shall have to conclude that the ancient eorl frequently rewarded his men with lands, though giving, perhaps, the usufruct only.⁴³ In addition, lands might be held by the title that violence gave.⁴⁴

While the evidence presented is not of such a nature as to warrant any extensive generalizing, a few things seem tolerably clear. Eorl and gesith were not originally synonymous terms: eorl referred to the old Germanic nobility, the *principes*, whose privilege it was to maintain a *comitatus*;⁴⁵ the term gesith was applied to the members of this following. It is not likely that all eorls made use of this privilege, but those that did were probably known as 'drihtens.' With the rise of kingship there seems to have come a decline in the fortunes of eorlship. The king's *comitatus*, which was, perhaps, largely recruited from the old nobility, formed the nucleus of a new privileged class. But the gesiths soon lost their militant nature and their order developed into a landed aristocracy.⁴⁶ As they had probably left the king's vill by the time of our earliest sources, we cannot consider them as belonging to the historic royal household.⁴⁷ Their places, however, were not left vacant; a new order of men, the thegns, succeeds them as the king's companions. While in many essential respects the thegn closely resembles his predecessor, the origin, the history and to some extent the character of thegnship are wholly

⁴²Beow., 2806-08.

⁴³Cf. Kemble, *Sax. in Eng.*, I, 179.

⁴⁴In one of Offa's charters we read: 'It happened in the days of Offa, king of the Mercians, that Bynna, comes regis, wrongfully appropriated this land.' *K. C. D.*, No. 164. It is by no means likely that this instance is an exceptional one.

⁴⁵See *Riddle*, No. 95: 'I am known to the indryhten (comitatus) and to the eorls.' The terms indryhten and eorl can hardly be synonymous. *Bibl. der ang. Poesie*, III, 238.

⁴⁶The subject of the gesith as a landholder does not lie within the field of this study. The most recent work dealing with this class from the view point of manorial possessions is Seebohm's *Tribal Custom in Anglo Saxon Law* referred to above. It should be remarked, however, that his conclusions are not always likely to be correct, as, in addition to employing the comparative method to a questionable extent, he bases his conclusions almost entirely on legal evidence, thus ignoring the great bulk of Anglo-Saxon sources.

⁴⁷The fact that the heroic poetry represents the gesiths as still abiding in the regal presence does not necessarily conflict with this conclusion. The past lives long in the realms of verse, and the "golden age" is always a favorite theme. The poems that have come down to us evidently belong to a period of transition from a time of war to an age of comparative peace, when a large military following could not very well be maintained.

different from those of gesithship and hence the subject requires separate treatment.⁴⁸

⁴⁸On the general subject of the English comitatus, the relationship existing between the eorl and his gesiths, the duties and privileges of the latter, etc., my conclusions do not differ much from those presented by Kemble and Stubbs. But Kemble sees no noteworthy difference between the gesith and the thegn (*Ses. de Eng.*, I, c. 7), and Stubbs holds that they are very closely connected, "so closely that it is scarcely possible to see the difference except in the nature of the employment. The thegn seems to be primarily the warrior gesith; in this idea Alfred uses the word as translating the miles of Bede."—*O. H.*, I, 172. As I see it, the difference between the two orders was considerable, and the gesith in my opinion was rather the warrior thegn. The gesith belongs to the earlier, more unsettled and warlike age; the thegn, to the age of national peace and organization. A general criticism that might be passed on the works of nearly all those who have written on Germanic institutions is that the elements of time and place are not sufficiently considered. In describing the comitatus historians are in the habit of using the writings of Snorre as well as Tacitus; but between these two historians lie a thousand years and more than two thousand miles, a very respectable distance in the middle ages.

CHAPTER III.

THE LATER COMITATUS IN ENGLAND: THE THEGN.

'Thegn' is an old Anglo-Saxon term, one of the oldest words in the language. Its general significance is readily determined, but its etymology has long been in doubt. Usually it is taken to be derived from an Indo-Germanic root *teg*, whence the Greek *τέκνον* *begat*, and *τέκνον*, *child*.⁴⁵ The term goes back into ancient Germanic times. The Old Saxon *thegan* means primarily a boy. In Old Norse *þegn* is frequently used for subject or common freeman. The Old High German form of the same word is employed to translate disciple. Nowhere does the primary significance of the term indicate high rank.⁵⁰ Furthermore, the character of a word is revealed not by its ancestry alone but also to some extent by its posterity. From *egn* þ are derived such words as *þegnian*, to serve, *þegnung*, service, and *þignen*, maid-servant. And these are not late formations: *þegnian* occurs in

⁴⁵ Mayhew, *Old English Phonology*, 51. Others have tried to connect *þegn* with *þeon* (Gothic *gabelhan*), to thrive. Leo confidently asserts that the thegn is 'he who has thriven,'—"se þe geþeah." *Recititudo*, 168-69. Had the term first appeared at the time of the *Promotion Law*, or of the period to which it refers, this derivation from *þeon* might seem reasonable. But still earlier lies a long age of what does not look like much prosperity on the part of thegnhood. But slightly different is Little's explanation, "the growing one, the boy or young man," *Eng. Hist. Rev.*, IV, 724. For the *Promotion Law* where the expression 'he who has thriven' occurs, see Schmid, *Gesetze*, Anhang, V.

⁵⁰ The author of the *Heiland* uses thegan and kuninges thegan in such a way as to suggest the English nobleman of that same period. But this meaning is clearly a derived one and can hardly represent native usage. The poem appears to have been written during the reign of Louis the Pious, when kingship was still a rather new idea among the Continental Saxons. Perhaps Anglo-Saxon influence can be traced in the terms employed. The author knew something of Bede; he used his homilies as a source in preparing his poem. See Windisch, *Heiland und seine Quellen*, 46. If he knew any of Bede's other writings, he would find the phrase "minister regis" frequently used, a combination that he would have to translate "kuninges the"

Beowulf. The early history of the word thegn is one of service.⁵¹ There is, however, no evidence known to me that would support the assumption that the original thegn belonged to an unfree class;⁵² but in time the term came to be applied in Anglo-Saxon to almost every possible rank of men from serf to noble. The present discussion will be limited, as far as possible, to the thegns at the royal court.

While the institution of thegnhood may be very ancient, its importance in the king's household is of a later date. In the earliest sources there is scarcely any mention of the thegn; in the earlier Kentish dooms⁵³ we read of *eorl* and *corlcund*, of churl and freeman, but nowhere of thegn or gesith. The first great change in terminology comes with the Laws of Withræd.⁵⁴ Gesith and thegn now appear for the first time in English legislation, but not as equivalent terms: the gesith is a member of a class, 'gesithcund,' while the thegn is a privileged individual; he is the king's thegn, while the 'gesithcundman' seems to have no master. If the king's thegn were originally a churl, he is one no longer. He can 'cleanse himself' with his own oath, while a churlish man needs three compurgators.⁵⁵ Not only has he risen above the common freeman, he has also passed the gesith.⁵⁶ If further evidence were needed to show that these two orders of men were wholly distinct, it is found in the early laws of Wessex, where the fine for breaking into the burg of a king's thegn is fixed at sixty *scillings*, and for the same offence against a land-owning 'gesithcundman' at thirty-five *scillings*.⁵⁷ Nor does it seem that the gesith had declined in importance. His position with reference to the king is very nearly the same as that of the

⁵¹This fact led Kluge to look for a corresponding derivation. In an earlier edition of his *Wörterbuch* (1889) he suggested that þegn might be derived from the Germanic base *þigwa*, whence Gothic *þius*, Old English *þeon*, a bondman. But he was evidently unable to overcome the phonological difficulties, for in his latest edition (1899) the suggestion is not repeated. See *Etymologisches Wörterbuch*, Degen.

⁵²In the enumeration of classes in the *Lay of Righ* (C. P. B., I, 238), the thegns are placed among the churls or common freemen. Thegn is the son of Karl.

⁵³*Laws of Æthelbriht; Laws of Hlotar and Eadric.*

⁵⁴The "cynlinges þegn" is mentioned in c. 20.

⁵⁵C. 20, 21.

⁵⁶The oath of a king's thegn is four times as strong as that of a churl. The fine for adultery on the part of a gesith is only twice as large as that fixed for the same crime on the part of a churl. *Laws of Withræd*, 5, 20, 21.

⁵⁷*Laws of Ine*, 45.

eorl of the older Kentish laws as appears from a comparison of fines⁵⁸ and wergelds.⁵⁹ But he is soon overshadowed by the rising class of thegnhood which had placed itself between him and his king. His fortunes are clearly waning, and after the ninth century the title *gesith* appears no more in English law.

The terminology of the Anglian poetry is also worthy of some consideration.⁶⁰ In the *Cædmonic* poems the thegn is high in the royal service. The author of the *Genesis*, when referring to the royal household, uses the title of thegn for any member of the royal following,⁶¹ but more particularly for one who performs the king's commands.⁶² The poet does not seem to attach any military significance to the word, though at times he does use it in the poem *Judith*. The guests invited to Holofernes' great banquet belonged to an inner circle of senior thegns, *yldestan*

⁵⁸The ratio of fines for similar crimes against the king and the eorl under the old Kentish regulations was as 25:6. *Laws of Æthelbriht*, 2, 5, 6, 10, 13, 14. Under the earliest West Saxon laws the ratio of fines for breaking into the king's or the *gesith's* burg was as 24:7. *Laws of Ine*, 45.

⁵⁹The earliest wergelds noted are those of Kent toward the close of the seventh century. In *Hlotar* and *Eadric's* dooms (1, 3), we read of men whose worth was three hundred scillings and others with a wergeld of only one hundred. If we double these we have the 'wers' of the six-hynde men and the twy-hynde men of the Wessex documents. But *Ine* (c. 70) also recognized a third class, or twelve-hynde men. It is hardly necessary to say that the wergeld of a king's thegn was twelve hundred scillings and that of a churl two hundred. Seebohm regards the six-hynde man "as probably the *Willisc* man with five hides or more." *Tribal Custom in Anglo-Saxon Law*, 401. His conclusion is based mainly on two chapters of *Ine's Law* (24:2, 32) where the wergelds of the native Celts are fixed, and appears well founded. But most likely the six-hynde class was composed of two distinct elements. From analogous conditions in Kent we should infer that the *gesithcund* (which are much in evidence in *Ine's* legislation) were of this class. And we are distinctly told that the worth of a Celt with five hides of land was six hundred scillings. In the reign of Alfred the six-hynde man disappears. Alfred and Guthrum's peace recognizes but two classes, twelve hundred men and two hundred men. See Schmid, *Gesetze*, 106, Cf. *ibid.*, 591-95, Geldrechnung; Steenstrup, *Danelag*, 115, 171-74; Seebohm, *Tribal Custom in Anglo-Saxon Law*, 352-55.

⁶⁰On this point I shall limit myself to the investigation of what the usage was in the century of *Cædmon* and *Cynewulf*, whose productions belong to the time before 800. The ninth century, which was the period of the Norse and Danish invasions, produced nothing, it seems, in the way of literature before the art was revived at the court of Alfred.

⁶¹After the expulsion of Satan there was again true peace in Heaven,—"the Lord dear to all, the Ruler to His thegns" (78-81). All the dwellers of Heaven are thegns. Cf. the description of the divine courts in *Andreas* (873-76) where the angels gathering in the Lord's presence are all called thegns: "Utan ymbe æþelne englas stodon, þegnas ymb þeoden þusendmælum."

⁶²Pharaoh's thegns, the princes of King James' version, who beheld the beauty of Abraham's wife, are also called *ombiht-scealcas*, a term of a decidedly servile origin. (1849-51; 1869-72.) When Abraham was at Gerar, Abimelech the king sent his thegns to bring Sarah to himself. (2627-28.)

þegnas.⁶³ When the watchmen discovered the advance of the Jewish host, they reported the matter to the eldest ruling thegns, *yldestan ealdor-þegnum*.⁶⁴ *Gesith* is used in reference to Hlofernes' guests, not as a mark of distinction, but in the sense of companion, *wea-gesipas*,⁶⁵ companions in woe. Farther on, the same term is applied to the warriors or leaders in the Hebrew host.⁶⁶ It will be seen that the significance of the word thegn when applied by the early Christian poets to members of the king's household is very general. Naturally it is used for free-men only. The antithetical usage of 'thegn and theow'⁶⁷ would scarcely permit us to apply the title to a serf.

There are, however, a few Old English poems of unmistakably heathen origin and of greater antiquity even than that of the *Genesis*.⁶⁸ These Teutonic lyrics and heroics deal largely with the life of the *comitatus* in the lord's hall—the higher life of that age. In *Widsith*, perhaps the most venerable of these, we meet such terms as *eorl*, *eorlship*, *gesith* and *duguþ*, but not thegn. Nor is there any mention of thegns in the *Seafarer*. The members of the *comitatus* in the *Husband's Message* are warriors and *gesiths*⁶⁹ but not thegns. In the *Wanderer* we find the title once in the compound *magu-þegnas*, meaning warriors.⁷⁰ While this remarkable absence of the term in the pre-Christian poetry does not prove absolutely that the thegn had not yet made his appearance among the great, it does seem to show that he had not yet thriven sufficiently to allow his own title to displace the earlier terms in the poet's vocabulary.

In *Beowulf* the word *þegn* has a rather general significance parallel to that which we found in the Biblical poems. On the whole, the usage implies the relationship of the *comitatus*.⁷¹ But there were thegns at Heorot whose services must have been too

⁶³ 7-10.

⁶⁴ 241-43.

⁶⁵ 16.

⁶⁶ 201.

⁶⁷ *Phoenix*, 164-65: *Æghwylc wille*
wesan þegn and þeow þeodne mærum.

⁶⁸ See chapter I.

⁶⁹ 33: *secgum and gesipum.*

⁷⁰ 62.

⁷¹ *Beowulf* himself was Higelac's thegn (194, 407-8); his men are his own thegns (400, 719, 1480); the shoreward bears the same title (285). See also 123, 293, 867, 1081, 1085, 1230, 1405, 1419, 1644, 2033 et passim.

menial for noblemen. The hero himself has an *ombeht-þegn*, who takes charge of his armor when he retires.⁷² There is a hall-thegn who looks after his general needs.⁷³ Thegns also seem to act as butlers.⁷⁴ Unfortunately, the composite character of the epic makes it an extremely unreliable source when the effort is to trace the development of any particular institution.⁷⁵ But we cannot err very much if we say that in this poem there are traces both of what the thegn once was, a trusted household servant, and of what he had recently come to be, the king's honored companion and guard.⁷⁶

In the Latin sources king's thegn is translated *minister regis*. The title frequently occurs in Bede: all the members of the royal court seem to have been *ministri* when the Ecclesiastical History was written. The term also occurs in some of the earlier charters,⁷⁷ but perhaps in no genuine document of the seventh century.⁷⁸ The earliest land-grant to a *minister* that has come down to us, was made by Æthelbald of Mercia (716-43).⁷⁹ From this time on, there is an increasing number of charters in which *ministri* appear either as grantees or as witnesses.⁸⁰

The results of our inquiry into the rise of thegnhood may be summed up as follows: in the laws, the charters and the poetic memorials,⁸¹ the earliest mention of the king's thegn falls in the latter half of the seventh century or the beginning of the eighth; on the other hand, in what appears to be earlier sources, there is scarcely a single allusion to a thegn of any sort.⁸² From this we

⁷² 678.

⁷³ 1794.

⁷⁴ 494.

⁷⁵ For a discussion of the structure of this poem, see Müllenhoff, *Untersuchungen über das angelsächsische Epos*. Berlin, 1890.

⁷⁶ Wealhtheow's allusion to the eorls as faithful and the thegns as gentle (1228-30) is interesting; but perhaps the antithesis was not intentional.

⁷⁷ The term *minister* occurs in a document purporting to be issued by Wulfhere of Mercia in 664. *K. O. D.*, No. 984. But the slightest examination of the text shows it to be spurious; it is full of technical terms from Norman times.

⁷⁸ A Mercian charter of uncertain date (716?) has four *ministri* among the witnesses. *K. O. D.*, No. 67. A grant attributed to Wulfhere and dated 624 is signed by two *ministri*. Birch thinks this is a genuine document, but would change the date to 674. *Cartul.*, No. 82. On close examination, however, it will be found to belong to a much later date.

⁷⁹ *K. O. D.*, No. 90.

⁸⁰ *Ibid.*, Nos. 109, 118, 117, 137, 1020, 1021 and later documents.

⁸¹ *Laws of Wulfred* (695-96); *K. O. D.*, No. 67 (716?); *The Genesis*.

⁸² Except in *Beowulf*; but that epic is probably the growth of a long period of time.

shall have to conclude that the real importance of this new order of men dates from the second half of the seventh century.

In this same period the transforming power of Christianity was beginning to reshape English life and institutions. The old faith perished and with it the great *comitatus* in the heavenly halls of Woden. This fact could not fail to affect the character of the same institution on earth;⁸³ it soon ceased to be a martial following of warlike *gesiths* and became a royal guard of thegns whose lives were dedicated to the new ideal of service. Nevertheless, the royal household retained its armed character; doubtless much of the old spirit was kept alive. All men, says Eddi, trusted Wilfrid; the nobles sent their sons to him to be educated as ecclesiastics, or as servants of the king, if they should be unwilling to enter the church.⁸⁴ The phrase here used, 'that he might commend them to the king as men in arms,' has a decidedly Tacitean flavor; but a *comitatus* of the older type is not necessarily implied.⁸⁵

As to how large the king's company of thegns was during the seventh and eighth centuries we have no information.⁸⁶ The guard of the Northumbrian king was, on one occasion at least, five or six thegns.⁸⁷ We get a vague idea of the size of King Edwin's household from Bede's account of the Princess Eanfled's baptism.⁸⁸ She was the first one of the Northumbrian people to receive that rite. Eleven others *de familia ejus* were baptized with her. Alfred understands these to be of the queen's household, *pære cwene hirede*. The queen was a Christian and had

⁸³Cf. the effect of the introduction of Christianity on the Norse viking.

⁸⁴*Hist. York*, I, 32: Principes....filios suos ad erudiendum sibi dederunt, ut aut Deo servirent, si eligerent; aut adultos, si manissent, regi armatos commendaret.

⁸⁵Bishop Wilfrid also kept an armed train. The jealous queen incited King Ecgfrith against him 'by eloquently recounting all the worldly glory of Saint Wilfrid the bishop, his riches, the great number of his monastic establishments, and the numberless host of his courtiers adorned with regal arms and vestments.' All this is doubtless highly exaggerated; but while we may question the regal character of the weapons, there is no reason to doubt the statement that the bishop's men bore arms. *Hist. York*, I, 34-35.

⁸⁶There were sixty thegns in the hall at Finnsburg, but this number probably originated in the poet's imagination. *The Fight at Finnsburg*, 37-38. Cf. Waltz, *D. V. G.*, I, 367.

⁸⁷Bede, *H. E.*, III, 26: Rex ipse....cum quinque tantum aut sex ministris veniebat [ad ecclesiam]...

⁸⁸*Ibid.*, II, 9:...quae baptizata est...prima de gente Nordanhymbrorum cum undecim aliis de familia ejus.

brought several attendants with her from Kent, doubtless all of the new faith. If these eleven were of her men or maids, the queen's service must have been quite large for the time and place. And we should imagine the king's own to be still more numerous. But Alfred's interpretation is not the only possible one. Most likely the eleven were of Edwin's own service. Whether the author is accurate or not is immaterial. He evidently saw nothing strange in the story, and in his own day the king's household must have been quite large. In describing King Oswin's liberality, he says: 'from all sides and from nearly every province men, even of the noblest blood, rushed to his service (*ministerium*).'⁸⁹

The relationship between the king and his thegns seems as a rule to have been a permanent one, especially in cases where a gift of land was a consideration. But, as we have already seen, lands and honors might be lost, and with them the royal favor. However, a thegn might also be dismissed in grace. Benedict Biscop, a young nobleman, served King Oswy as *minister* and received a suitable estate from his master before he was twenty-five years old, but despising earthly possessions he left the royal service and went to Rome (ca. 653).⁹⁰ In a Kentish charter of 762 the grantor refers to himself as Æthelbirht's *minister* during the life of that king.⁹¹ This form of statement and the fact that no title is joined to his signature lead us to infer that he had ceased to be a *minister*. A thegn, it seems, might be permitted to transfer his allegiance from one royal master to another;⁹² but strangest of all, it was apparently possible for him to serve two lords at the same time, as their 'common *minister*.'⁹³

The history of thegnhood after the eighth century closely resembles that of the earlier *comitatus*: the king's household became the birth-place of a new landed aristocracy. As the Anglo-Saxon

⁸⁹H. E., III, 14.

⁹⁰Bede, *Opera*, II, 140.

⁹¹K. O. D., No. 109: Ego Dunnuald minister, dum aduluerit, inclitae memoriae regis Aethelberti....

⁹²Bede tells of a thegn, a prisoner of war, who got his ransom money from the king of Kent, the son of Queen Æthelthryth's sister. The prisoner had once been the minister of Æthelthryth or of her sister; but at the time of his capture he served Ecgfrith, king of Northumbria and Æthelthryth's husband. H. E., IV, 22.

⁹³In 801, the Mercian king and his brother, the king of Kent, conveyed lands to "Suðhune, nostro in commune ministro." K. O. D., No. 179.

king was not in the habit of legislating for his court, the mention of his thegns in the last Kentish laws implies that they had acquired a position away from the royal presence and were no longer in constant attendance upon their master. Whether the practice of rewarding the *ministri* with lands was common during the earlier period cannot be known: all the extant charters of the seventh century are issued to ecclesiastics or to laymen for ecclesiastical purposes.⁹⁴ The same, with perhaps five exceptions,⁹⁵ is true of the eighth century grants before Offa's reign (757-96). During the second half of the century lay grantees become more numerous, and several of the transfers are to king's *ministri*. That the *ministri* were specially favored by Offa appears from two restoration charters issued by Coenwulf (798-819), under whom a clerical reaction seems to have set in.⁹⁶ Owing to warfare and unsettled conditions, the records of the ninth century are not very satisfactory; but, such as they are, they show an increasing number of grants to laymen. This tendency appears to have culminated about the middle of the tenth century. Edward's charters (901-24) are nearly all to churchmen. Under Æthelstan (925-40) there is a decided increase in the number of landed gifts to *ministri*. Of the extant

⁹⁴The grant of Wulfhere (Mercia, 624 or 674) to his kinsman Berhfrith (Birch, *Cartul.*, No. 32) can hardly be considered genuine. It is signed by two bishops, Wita and Totta. Wita and Tuda are probably meant, but Tuda died ten years before the grant was made. See Stubbs, *Reg. Sac. Anglo.*, 3.

⁹⁵*K. C. D.*, Nos. 79, 90, 101, 117, 1001; Birch, *Cartul.*, No. 203 (apparently a duplicate of *K. C. D.*, No. 117). In No. 90 Æthelbald (Mercia, 716-48) gives land to Osred his "*ministro...valde fideli qui est de stirpe non ignobili prosapia regali gentis huleclorum*". This is the earliest recorded grant to a thegn. No. 117 is a grant by Uhtred (Hwiccas, 767) to "*fideli meo ministro aedelmundo*". No. 1001 may be a grant to a churchman. It should be added that the fact that so few charters conveying lands to laymen are extant does not necessarily lead to the conclusion that such gifts were but rarely made. The documents would not be so likely to be preserved as those of the church.

⁹⁶The first of these relates to lands which at one time had been given by King Egbert to his thegn Aldhun; and this one, going beyond the sea, had given it to the church at Canterbury. But afterwards Offa annulled this grant and distributed the lands among his thegns, saying that it was not right for his minister to hand the estate over into the power of another: "*Sed harum postmodum possessiones terrarum Offa...immutavit suisque distribuit ministris, dicens injustum esse quod minister ejus praesumpserit terram sibi a domino distributam absque ejus testimonio in alterius postestatem dare...*" *K. C. D.*, No. 1020. The same year the king restored to a church at Dover certain lands "*quas olim rex Offa eidem ecclesiae ablatas suis contulit ministris...*" *Ibid.*, No. 1021. In 840 Berhtulf of Mercia restored certain lands which he had taken from the church at Worcester and 'given to his own men'. *Ibid.*, No. 245.

charters dating from the reigns of Edmund (940-46), Eadred (946-55) and Eadwig (955-59), only a minor fraction record grants to the church. Edgar (959-75) was more liberal in endowing ecclesiastics, but even he distributed lands more freely among his thegns.

Occasionally the particular office of the person endowed is specified,⁹⁷ but more commonly *minister* is the only title employed. In nearly every case immunities, more or less extensive, went with the land. It seems that from the accession of Offa (757) the Old English kings made a deliberate effort to build up an aristocracy of land-owners. On the other hand, the *ministri* were eager for territorial possessions.⁹⁸ In his 'Epistle to Egbert' Bede gives us a vivid picture of official rapacity in Northumbria in the generation before Offa. The subject is monastic corruption brought about largely by the purchase of monasteries by the king's men: 'thus there are many who are called abbots and at the same time prefects or thegns or servants of the king.'⁹⁹ This condition seems to have been general all over the land,¹ and had existed, we are told, about thirty years.²

The thegns thus endowed with lands or local offices naturally could not be constantly present at the royal court. But their personal relationship to the king did not cease; nominally, they still belonged to his household. We read in the 'Promotion Law' that a churl might become a thegn, if he had, among other things,

⁹⁷As for instance *K. C. D.*, No. 489, a grant to "cuidam cubiculario"; *Ibid.*, No. 503, lands given to "cuidam camerario", etc.

⁹⁸The biographies of the English saints show us mere striplings hovering about the royal court, all doubtless expecting future rewards. See *Memorials of St. Dunstan*, 11; *Hist. York*, I, 4.

⁹⁹*Opera*, II, 219: Atque ita ordine perverso innumerī sint inventi, qui se abbates pariter et praefectos sive ministros aut famulos regis appellant, qui etsi aliquid vitae monasterialis ediscere laici non experiendo... Cf. *Hist. York*, I, 410-11.

¹There were evidently thegns in all the kingdoms. But after the establishment of the Danelaw, thegnhood seems to have flourished mainly in the south. Nearly all the royal grants of the tenth century are of lands south of the Thames; a few are located in the counties on the north bank; extremely few in the northern counties. In that region the social system was somewhat different, being based on the Norse ideas of a free yeomanry. See Steenstrup, *Danelag*, 103.

²The *Epistola* was written in 784 or 785. The movement, then, would date from about 700, or soon after the time when the thegn first appears in the sources.

a 'seat and special service in the king's hall.'³ The term used for special service is *sunder-note*. This probably signified some particular duty, the same for all such thegns, established by custom once for all. The word seems to be thus used in *Beowulf*: the king had retired and a watch 'attended to the special service.'⁴ Judging from the context we should take this to mean serving as a guard. In the *Rectitudines*⁵ mention is made of *heafod-weard*, head-ward, a service that the thegn owes to his king and the *geneat* to his lord.⁶ Schmid's opinion, that this was the duty to guard the royal head when the king came into that particular region, is probably correct.⁷ The term is used in a similar sense by the Anglian poets.⁸ It appears from Asser's account that the thegns of Alfred's day had a similar duty to perform. 'For the *satellites* of the aforesaid king were most prudently divided into three cohorts in such a manner, that the first division remained and served at the royal court day and night for a month; when the month was ended, another division coming, the first departed for home.'⁹ Here we have thegns living abroad throughout the realm, but whose duty it is to give one-third of their time to the king's service at the royal vill. Fifty years later we find the thegns making similar periodic visits to the king's court. The authority for this statement is a passage in Edmund's laws: 'And I further make known, that I will have in my household no one

³Schmid, *Gesetze*, Anhang V:

And gif ceorl geþeah, þæt he hæfðe.
fullice fíf hilda agenes landes,
cirican and kycenan, bell-hus and burh-geat,
setl and sunder-note on cynges healle,
þonne was he þononforð þegen-rihtes weorðe.

The document is thought to date from the tenth century, but does not pretend to describe conditions as they were at the time of its authorship: it gives the law as 'it was whilom'. See Stevenson, *Burh-geat-setl*, in *Eng. Hist. Rev.*, XII, 489-92.

⁴Sundor-nytte beheold ymb alder Dena (ll. 667-68).

⁵A tenth century document. See Leo, *Rectitudines*, 222 ff.; Seebohm, *Eng. Med. Village Community*, 129.

⁶Schmid, *Gesetze*, Anhang III, 1, 2.

⁷Cf. Old Norse *höfuðvörðr*, the term applied to the personal guard of the Norwegian kings. See Keyser, *Efterladte Skrifter*, II, 78.

⁸The Assyrian sentinels guarding Holofernes' camp are called *heafod-weardas*. *Judith*, 239. Wiglaf kept *heafod-weard* over the body of his dead lord. *Beow.*, 2906-10.

⁹Petrie's *Monumenta*, 405: In tribus namque cohortibus praefati regis satellites prudentissime dividebantur, ita ut prima cohors uno mense in curto regio die noctuque administrans commoraretur, menseque finito, et adveniente alla cohorte, prima domum redibat.

who has been guilty of shedding human blood, before he shall have submitted to divine penance and all that is proper, as the bishop shall instruct him in whose shire it be.¹⁰ Evidently the members of Edmund's household dwelt in different shires.¹¹

Our conclusion then must be that, while there doubtless was a permanent court, there was also a body of household thegns whose presence at this court was occasional only, or at stated times, but whose duties nevertheless were definite and well understood. Analogous to this is the Norse system as described in *Speculum Regale*. The author of this work recognizes five classes among the king's servants, his classification being based on the amount and character of the service rendered. Two of these classes are made up of absentees who rarely come to the court, but who also have duties to perform, the specially important duty being to assist the king's officer in executing royal mandates in their region.¹²

That the English king would employ the thegns at his court as special agents in matters not exactly in the hands of his regular officials is almost self-evident and readily inferred from the language of the sources.¹³ But that the absentee-thegn possessed any local executive functions is not so readily shown. The thegn who had thriven to the extent that he served the king and

¹⁰II, 4: Eac ic cyðe, þæt ic nelle socne habban to minum hirede þone, þe mannes blod geate, ær he hæbbe godcunde bote underfangen and wib þa mægðe gebet on bote befangen, and to ælcum rihte gebogen, swa biſcop him tæce, þe hit on his ſcyre ſy.

The translation is disputed, the uncertain element being the word *socne*. Liebermann's rendering is clearly conjecture. Schmid thinks the sentence is corrupt. The translation given in the text is based on Steenstrup's interpretation (*Danelæg*, 211), which appears to me to be correct, and, if accepted, makes the passage clear.

¹¹This interpretation is based on the fact that the criminal seems to be subject to a shire-bishop and not to the court clergy.

¹²*Speculum Regale*, 260 ff. As will be shown later, there are good reasons for thinking that the organization of the royal court in Norway was in many respects a copy of the English hired as it was in Æthelred's day. We should therefore expect to find the English thegns of the tenth century performing to some extent the same functions as the king's men performed in Norway two centuries later.

¹³When the Lord has a special message to deliver to men, he sends his thegn or his high-thegn. See *Daniel*, 441-43; instances from the *Genesis* have been given in another connection. We read that a king once sent Saint Wulfstan, then one of his ministri, to assist a bishop in enforcing obedience. *Chronicon Monasterii de Abingdon*, II, 260. Ælfric, writing on the eve of Danish rule, speaks of thegns as ambassadors and military commanders. *Lives*, The Macca-bees, 330 ff. Cf. Cook, *Biblical Quotations*, 100: Naaman a thegn.

'rode as his mounted messenger at his household'¹⁴ evidently received his orders at court. Still, that the thegn came to be an important factor in the local administration appears from numerous passages in the laws. In Northumbria he seems to have assisted in collecting church-dues.¹⁵ In London he evidently served as peace officer.¹⁶ One of Æthelstan's laws provides punishment for a thegn who shall have taken a bribe.¹⁷ The phrase, 'I and my thegns,' used in Edgar's law,¹⁸ puts a special emphasis on this order of men and indicates that they were invested with considerable authority.

To assign a constitutional position to the holders of thegn-right is, however, extremely difficult.¹⁹ Feudal analogies will not help much to clear up matters, for all thegns did not have land.²⁰ It seems that the king's men were in a great measure out of the reach of the local authorities. Their land-dues were nearly all to the king.²¹ Says Æthelred, 'no man shall have *soc* over a king's thegn but the king himself.'²² Edgar magnanimously permits the townsmen to examine herds of live cattle belonging to himself and to his thegns.²³ 'In every shire and borough the king has the rights of his kingship and the thegn

¹⁴Schmid, *Gesetze*, Anhang V, 3. For a corrected translation see Steenstrup, *Danelag*, 183. Seebohm's rendering of "on his hired" as "with his household" I am not able to accept. I must also reject his translation of *radstefne* as "on his summons". *Tribal Custom in Anglo-Saxon Law*, 368.

¹⁵Schmid, *Gesetze*, Anhang II, 57.

¹⁶*Laws of Æthelstan*, VI, 11.

¹⁷V, I: 3, 4.

¹⁸IV, A, 6.

¹⁹Much of what has been written on thegnage deals with the institution mainly as it was just before the Conquest. Thus Maitland, *Domesday Book and Beyond*, 161 ff. As for the earlier thegn, Seebohm regards him as "a soldier first of all things". *English Village Community*, 135. Stubbs virtually holds the same opinion. *C. H.*, I, 172. Schmid seems to believe that the bond of service that held the thegn to the king was dissolved at some period before 900 and that subsequently thegnright was based on territorial holdings with an irresistible tendency to become hereditary. *Gesetze*, 666. An effort is sometimes made to distinguish between king's thegn and common thegn (see Pollock and Maitland, *History of English Law*, 10) but such a distinction can hardly be established before the eleventh century. While the military and territorial elements of thegnhood are important considerations, I believe they are subordinate to that of personal relationship to the king.

²⁰*Laws of Æthelstan*, VI, 11: ...and be healfum þam ælc minra þegna þe gelandod sy....

²¹Schmid, *Gesetze*, Anhang III, 1. *Rectitudines*.

²²*Laws of Æthelred*, III, 11: And nan man nage nane socne ofer cynges þegen buton cyng sylf.

²³*Laws of Edgar*, IV, B, 13.

those of his thegnship.³⁴ In addition to legal privilege and social prestige the thegn apparently enjoyed great wealth.³⁵ Constitutional writers have generally supposed that five hides were necessary to make up a noble estate,³⁶ and it is quite probable that such was originally the rule.³⁷ If 'whilom' a churl wished to become a thegn, he had to have five hides at least;³⁸ but land alone was not sufficient. The development of this landed nobility extended over a period of at least three hundred years. In this evolution the rights of thegnship became hereditary³⁹—soon men were thegn-born as well as churl-born⁴⁰—and it seems unlikely that the estates could have been kept intact. On this point the charters shed no light. Æthelbald's grant to Osred, perhaps the earliest transfer of land to a *minister* of which we have the record, is of twenty *cassati*.⁴¹ After that the charters involve land-grants of varying extent, but usually not less than five hides.⁴²

But the thegn was not always merely a household servant or a local dignitary, he might also be a member of the national assembly. The privilege of membership in the king's council seems to have originated in the royal household. We have an early account of the deliberations of such a gemot in Bede's account of Edwin's conversion.⁴³ Prominent among the members was Cefi, the heathen *ealdorbisceop* of Alfred's version. He presided over the sanctuary in the 'town' where the council was held, and, as this was probably a royal vill, we should fancy that

³⁴ *Laws of Edgar*, IV, B, 2.

³⁵ *K. C. D.*, No. 805 (1046-60). One Toki is represented as "praepotens vir et diues minister regis". Ælfric frequently speaks of wealthy thegns. See *Lives*, I, 154; *Homilies*, II, 172; where thegns are spoken of as desiring convents to be built on their lands. The *Laws of Edgar* (II, 2) have a provision directed against such of his men as had churches on their book-lands. Wulfstan informs us that thegns frequently had serfs. *Homilies*, 162-63.

³⁶ Stubbs, *C. H.*, I, 173. Cf. Maitland, *Domesday Book and Beyond*, 164; Pollock and Maitland, *History of English Law*, I, 10. Little (Gesiths and Thegns. *Eng. Hist. Rev.*, IV, 723-29) combats the five-hide theory, but not with entire success.

³⁷ See *Eng. Hist. Rev.*, IV, 728; Little, Gesiths and Thegns.

³⁸ Schmid, *Gesetze*, Anhang V, 2.

³⁹ See *ibid.*, 666.

⁴⁰ *Ibid.*, Anhang I, 5 (Gerædnes betweox Dunsetan): "...sy he begen-boren, sy he ceorl-boren..."

⁴¹ *K. C. D.*, No. 90 (716-43). Uhtred's grant to Æthelmund (767) conveys five tributaria. *K. C. D.*, No. 117.

⁴² In many instances the lands were formerly held by the grantee's father.

⁴³ *H. E.*, II, 18. Cf. Freeman's view of the earlier assemblies. *N. C.*, I, 67 ff.

Cefi belonged to the royal court as king's priest. Bede is not explicit on this point: but Alfred understands the phrase *nullus tuorum* to mean *nullus tuorum ministrorum*, and accordingly translates it 'none of thy thegns; he regards Cefi as a king's thegn.

It may be that after the establishment of Christianity the Christian bishop, who usually stood close to the king, stepped into the position of the heathen priest; when dioceses multiplied the new bishops may have been accorded the same privileges as the earlier ones. Along with the ecclesiastics and other dignitaries an indefinite number of *ministri* came to the council. These were probably designated by the king.³⁴ That the king controlled the membership of the assembly appears from the fact that priests were admitted to Edward's *witenagemot* but excluded by his successors.³⁵ Some kings admitted abbots, others did not. Nor does it seem necessary that the same *ministri* be in attendance from reign to reign. In one reign the attendance might be large; in the next small. The high-water mark was reached in Æthelstan's day, when more than fifty *ministri* attended a gemot.³⁶

The institution of thegnship in the older sense seems to have wholly disappeared in the reign of Cnut. The name indeed remained, but apparently its application was limited to a class of men holding land by a peculiar form of tenure. And frequently the title is used so loosely in Cnut's documents as to justify the statement that to the Danes and their king thegn did not mean a member of the native nobility, but simply a subject, as it did in the North. In a royal writ from the early years of his reign, Cnut addresses all freemen as thegns *twelf-hynde and twi-hynde*;³⁷ and his classification of thegns into those nearest the king and 'lesser thegns'³⁸ suggests the elaborate system of classes that prevailed in his other kingdoms, especially Norway, where the

³⁴Kemble seems to think that every freeman had a theoretical right to attend the *witenagemot*. *See in Eng.*, II, 201. The same view in a more extreme form is presented by Freeman. *N. C.*, I, 68, 69, and Appendix Q. Stubbs apparently holds that the *ministri* who attended the council were nominated by the king. *O. H.*, I, 135, 140. Cf. Gneist, *Englische Verfassungsgeschichte*, 81-84.

³⁵There can be little doubt that such documents as Nos. 337, 1082, 1084 (others could be cited) in Kemble's collection were issued at meetings of the *witan*.

³⁶*K. O. D.*, No. 353 (931). See also No. 364 (934). Cf. Stubbs, *O. H.*, I, 140.

³⁷*K. O. D.*, No. 731 (1013-20): Cnut cing gret Lyfing arceblisceop and Godwine blisceop and ealle mine egnas twelfhynde and twihynde freondlice.

³⁸*Laws of Cnut*, II, 71: 1, 2, 3.

earliest codes recognize six intervening classes between the king and the serf.³⁹ We are safe in affirming that the thegn was not regarded as a member of Cnut's household: as guardian of the king's person and perhaps of the royal interests throughout the realm, the house-carle had taken his place.⁴⁰ We have, however, passed the point where a discussion of thegnhood with reference to the royal court can be a fruitful one.

Before the Danish invasion, however, the *ministri* were something more than great landed proprietors with certain military obligations; they composed an aristocracy bound to the king by peculiar personal ties and forming an extension of his court into the various parts of his kingdom. From the humbler realms of household service, the order had risen, first to the plane of honor as a royal *comitatus*, and next to the plane of influence as a landed nobility. In the days of its prosperity it formed the great outer circle of the royal service. But there was also an inner circle of thegns whose duties kept them in constant attendance at the palace. These officials will be the subject of the chapters following.

³⁹See Munch, *N. P. H.*, I, 1, 148.

⁴⁰The house-carles will be considered in a subsequent chapter.

CHAPTER IV.

THE KING'S REEVE: *PRAEFECTUS REGIS*.⁴¹

At the beginning of the seventh century there seems to have been no distinction, in the Kentish kingdom, between local and central authorities. From the language used in the Laws of Æthelbirht, we should infer that the king was in direct contact with his people, that the ruler summoned the folk to the royal vill and dealt out justice in person.⁴² But soon a shadowy official emerges, a sort of an intermediary between the lord and the people. The king's reeve may be as old as the English kingship, but we catch our first glimpses of him about the year 700.⁴³

That the reeve was a household official in the narrower sense of the term seems to be apparent from certain allusions in the earliest sources; that he at times acted in a more public capacity seems equally clear. But in the early part of the eighth century it is difficult to draw the line between what relates to the management of the royal domicile and what may be called public administration. As the *gerefa* of later Anglo-Saxon history was a local functionary, the question naturally arises whether the early *praefectus* is not the later *praepositus*, *scir-gerefa* or sheriff. We shall have to consider this possibility before proceeding further.

⁴¹As the historic development of the royal reeveship differs in many important respects from that of the other household officers, I have preferred to treat the subject in a separate chapter.

⁴²C. 2: Gif cýning his leode to him gehated and heom mon þær yfel gedo, II bote and cýninge L scillinga. See also *Laws of Hlotar and Eadric*, 7. Recovered stolen property was to be brought to the king's hall, "to cýnges sele," whenever possible. The same custom of royal judgment seems to have been the ruling one in Mercia. See *K. C. D.*, Nos. 210 (816) and 10-8 (796-821).

⁴³For the subject of the king's reeve see Kemble, *Sax. in Eng.*, II, 169-71; Stubbs, *O. H.*, I, 372; Green, *Conqu. of Eng.*, 229, 524; Schmid, *Geistes*, 597. In none of these discussions are any satisfactory conclusions reached, mainly because the subject is usually studied from the point of view of the shire organization.

To have a shire-reeve we must have a shire, a more or less definite territorial circumscription within which the reeve exercises certain recognized authority. But to show that such an administrative area existed before the reign of Alfred is exceedingly difficult. *Scir* is an old word in Anglo-Saxon, but its territorial significance is not the most ancient. The earliest meaning that we can distinctly make out is official duties or functions.⁴⁴ In the Erfurt Glossary, which probably dates from the seventh century, *scir* is used to translate *procuratio*.⁴⁵ The word frequently appears in Alfred's version of Bede's history, but nearly always with an ecclesiastical significance. Sometimes it refers to the duties and functions of an office,⁴⁶ sometimes to the territorial limits within which these are exercised.⁴⁷ Bede's *provincia* is almost universally translated *mægþ*, a word with a tribal rather than a territorial meaning.⁴⁸ The fact that *scir* occurs almost everywhere in the Chronicle merely proves that such administrative areas existed at the time of its compilation, which can hardly have antedated Alfred's reign. More pertinent are certain chapters in the Laws of Ine. But the judge or *scirman*⁴⁹ alluded to in the first of these may be an official in the general sense, one who holds a *scir* or office. The threat that an ealdorman might lose his *scir*⁵⁰ would at first sight appear to prove the presence of a shire in Wessex as early as this reign (688?–726?). In later Saxon times the ealdorman may have been the highest official of the shire, but an examination of the use of the term in early English documents shows the impossibility of arguing from the use of this title. Any person invested with authority might be called

⁴⁴The Roman term *provincia* has a similar history. It first signified official functions; later it was applied to the area over which an official exercised a delegated authority. See Marquardt, *Römische Staatsverwaltung*, I, 497–98.

⁴⁵Sweet, *Oldest English Texts*, 82. For the probable date of the glossary see *ibid.*, 2, 624.

⁴⁶*Scir* or *bisceopscir* is used to translate *episcopatus* (III, 21), *praesulatus* (V, 19), and *cura episcopi* (IV, 27). *Cura monasterii* is rendered *mynsterscir* (V, 19).

⁴⁷Such as *parrochia* (IV, 13) and *diocesis* (IV, 1).

⁴⁸The passage in which Bede narrates the conversion of the prefect of Lincoln ("praefectumque Lindocolinae civitatis . . . convertit ad Dominum," II, 16) might seem to point to a shire-reeve; but Alfred disposes of the suggestion by rendering the phrase, "Lyndecylene ceastre gerefan." Ceaster is the Anglicized form of *castra* and signifies a city of some importance. This prefect cannot have been anything but a city-reeve, burg-reeve, or port-reeve.

⁴⁹C. 8.

⁵⁰C. 36:1.

an ealdorman.⁵¹ The specific meaning that the word had in the tenth century did not appear till after the time of Alfred.⁵² The legal provision referred to may mean only that a derelict official should lose his office. A stronger argument for the existence of an early shire is found in chapter 39 of the same laws, which deals with illegal moving from one shire to another. It must be remembered, however, that Ine's laws have come down to us in the form in which they were reënacted by Alfred.⁵³ While we cannot prove that they were changed to any extent, it seems likely that two intervening centuries would make it necessary to adapt the language to changed conditions. But even if we concede the existence of shires in Wessex before 700, we have no evidence whatever on which to base an argument for its existence in Northumbria or elsewhere. In his account of King Edwin's itineraries, Bede states that he traveled extensively *inter civitates sive villas aut provincias suas*.⁵⁴ Alfred translates this phrase thus: *betwyh his hamum oppe be tunum*. Here would have been an excellent opportunity to use *scir*; but here as elsewhere it is wanting.

The possibility remains that the prefect may have been the chief of a more strictly local organization⁵⁵ such as the hundred. But to prove the existence of a hundred in this early period is even more difficult than to show that the shire existed. Henry Adams⁵⁶ and Emil Hildebrand⁵⁷ have suggested that the phrases *in loco* and *in regione*, frequently used in determining the location of lands, may refer to hundreds. But Steenstrup, after examining the language of the charters cited to support this view, concludes that these terms are purely geographical, not political.⁵⁸

⁵¹In Alfred's translation of Bede's history, *subregulus*, *primus dux*, *dux regis*, *princeps*, *tribunus*, *patricius*, *praepositus* (of a monastery), *optimas*, *major natu*, *satrap*, are all called ealdormen. See I, 7, 13, 18, 34; II, 18; III, 3; IV, 12, 15, 23. The *villicus* who was Cædmon's master ("qui sibi praeerat") is also spoken of as an ealdorman (IV, 24); similarly the elders (*maiores*) of a monastery (V, 19) and the chief men of a *byrig* (IV, 25).

⁵²As shown in the above note.

⁵³See Schmid, *Gesetze*, Einleitung, XXVII.

⁵⁴H. E., II, 16.

⁵⁵He could not have been a town-reeve as that official is usually called a *villicus*; Bede uses that title several times.

⁵⁶*Essays in Anglo-Saxon Law* (Boston, 1876), 1-22.

⁵⁷*Engelska Samhällsfrhållanden*, 53.

⁵⁸Steenstrup, *Danelag*, 80-81. The author shows that the *regio* in but a few instances corresponds to a later hundred. He thinks these became hundreds in later times. He also shows that several of the *regiones* are too large areas to be hundreds, such as the *regio Kent*. See *K. O. D.*, No. 1019.

An examination of Alfred's Bede materially strengthens this view. *Locus* is usually translated *stow*, the common Old English word for place, *regio* is frequently rendered *land*.⁵⁹ Thus, *in regione Sudergeona* becomes 'in Surrey land.'⁶⁰ Surrey could hardly have been a hundred only. For *regio* in the phrases *in regione Nordanhymbrorum*⁶¹ and *in regione quae vocatur Infeppingum*,⁶² Alfred uses not *land* but *þeodland*, the land of a people or tribe. When a word is used for such large areas as Kent, Surrey and Northumbria, it seems impossible to maintain that it is the technical Latin term for the Old English hundred.

Praefectus, like its Anglo-Saxon equivalent *gerefa*, is a very general term: the reeve was merely a deputy, one whose authority is all derived from a superior. Any owner of a large estate might have and doubtless did have a reeve to whom the management was largely entrusted.⁶³ *Gerefa*,⁶⁴ an Anglo-Saxon text from the reign of Æthelred, is devoted to the duties of such a manorial official. There is nothing in the document that could suggest to us that the reeve under discussion might be the official of a shire; and yet he is called a shire-man, *scyrman*,⁶⁵ and 'the one who holds the shire.'⁶⁶ The king, as the greatest landowner of the realm, would be in special need of such a deputy. The author of the poem *Genesis*, who regards Abraham as but little less than a king, calls his steward Eliezer his *gerefa*.⁶⁷

The earliest mention of the king's reeve in the laws is in Ine's code which dates from the same period as the *Genesis*. 'If the theft be a night old, let those who have seized him [the thief] atone for the guilt on the terms they may be able to arrange with the king and his reeve.'⁶⁸ In this case the reeve seems to be

⁵⁹"In regione quae vocatur Loldis:" "on þam lande þe Loldis is haten" (II, 14); "in regione Gyrflorum;" "on Gyrwan lande" (IV, 6). (In a list of territorial names found in a tenth or eleventh century manuscript, the Gyrwas are represented as containing 1,200 hides. Birch, *Cartul.*, No. 297.) The island of Ely is also called a *regio*; in the translation we find "Elig þæt land." (IV, 19).

⁶⁰...on Suðrigona lande. (IV, 6.)

⁶¹V, 12; ...on þeodlande Norðanhymbra.

⁶²III, 21: ...on þam þeodlande þe is nemned on Feppingum.

⁶³A "praefectus episcopi nomine Hocca" is mentioned in Eddi's *Life of Wulfred*, written ca. 710. *Hist. York*, I, 29.

⁶⁴Published with a commentary by Liebermann in *Anglia*, 9:251-66.

⁶⁵Swa sceal god scyrman his hlafordes healdan (p. 260).

⁶⁶Hede se ðe scire healde.... (p. 259).

⁶⁷Ll. 2181, 2186.

⁶⁸C. 73:Swa hie geþingian mægen wið cyning and his gerefan.

acting with the king in assessing fines, a duty which naturally would fall to him as the royal steward. In the Laws of Alfred there is a significant passage relative to prisoners who are brought to the king's vill:⁶⁹ '...and let his kinsmen feed him if he himself have no meat.'⁷⁰ If he have neither meat nor kinsmen, let the king's reeve feed him.'⁷¹ It is hard to believe that there was at this time a public as well as a private treasury at the royal vill. And if there were no public funds, the reeve would have to draw on the supplies of the king's own household. The inference is that the reeve was in charge of the king's vill.⁷² That such a functionary really existed is shown in a document recording a grant of land by Archbishop Æthelweard in 805. The lands in question had been given originally by 'a certain good man, Aldhelm by name, who was prefect of the royal vill in this famous state [Kent].'⁷³

Thus far we have considered the reeve as an official whose functions were fiscal in the main. But he might have other duties. From the materials presented above it will be seen that the reeve assisted in certain judicial matters. In one instance a prefect was sent as ambassador across the Channel. When the Kentish king heard of the coming of Theodore of Tarsus, 'he immediately sent to him Redfrid his reeve (*præfectum suum*) to bring him across.'⁷⁴ But this same official might also be employed as a military chief. We read of prefects holding important military strongholds at Dunbar and Bromnis.⁷⁵ In 710

⁶⁹This law refers only to such as have been unfaithful to vows.

⁷⁰C. 1:2.

⁷¹C. 1:3: Gif he mægas næbbe oððe þone mete næbbe, fede cyninges gerefa hine.

⁷²That the prefect was intimately connected with the royal court appears from a passage in the *Chronicle* for 787. We read of a gerefa who rode down to the shore to meet the Norse pirates and, not knowing who they were, tried to drive them to the king's vill: 'se gerefa þær to rad and hie wolde drifan to þæs cynges tun.' He is not called the king's reeve, but the context would lead us to believe that he was such an official. Æthelweard calls him *exactor regis*. Kemble understands this to mean that he was a burgrave. *See in Eng.*, II, 171. But Æthelweard, who wrote two centuries after the fact, probably used a term which came nearest describing the functions of the reeve in his own day. A prefect in the earlier sense of the word perhaps did not exist when he composed his *Chronicle*.

⁷³*K. C. D.*, No. 180: Hanc prænominatam terram quidam homo bonus, nomine aldhun, qui in hac regali ulla illustris civitatis præfectus fuit....tradidit.

⁷⁴Bede, *H. E.*, IV, I.

⁷⁵*Hist. York.*, I, 51, 52, 54. Eddi's Life of Wlfrid. It is not sure, however, that Eddi's use of the word prefect is in line with that of Bede or the charters. It seems more likely that he has a more purely military officer in mind. Still,

Berctfrith, a prefect, led an army against the Picts.⁷⁶ As Osred ruled in Northumbria at that time, Florence calls this general *Berhtfrith regis Osredi praefectus*.⁷⁷ Wulfheard, who is spoken of as a prefect in one of Egbert's charters,⁷⁸ is mentioned twice in the Chronicle as a military leader; in 823 he invaded Kent at the head of a large army; in 837 we find him opposing the Danes.

The prefect begins to appear among those who witnessed the royal grants soon after the beginning of the eighth century. Usually only one prefect signs; so generally is this true that a document bearing several such signatures looks suspicious. Twenty-seven charters dated before the accession of Egbert (824) are signed or seem to be signed by one prefect or more. Of these, nine must be rejected as forgeries or at least considered doubtful.⁷⁹ Nearly all of these nine are signed by more than one prefect.⁸⁰ Of the remaining eighteen, thirteen are witnessed by only one such official.⁸¹ Of the other five one most probably is signed by presbyters and not by prefects.⁸² Another appears to me to be spurious.⁸³ A third affords no means of determining whether it be genuine or not.⁸⁴ Cynewulf's grant of 778 is too

the strongholds are spoken of as "urbes regis." Dunbar is located on what was then the Scottish frontier not far from Edinburgh, and was doubtless an important frontier fortress. Bromnls has not been located. Bebbanburh has been suggested and also Brunanburh. Raine (*Hist. York*, I, 51, note) suggests Broomridge.

⁷⁶Bede, *H. E.*, V, 24: Berctfrid praefectus cum Pictis pugnavit.

⁷⁷I, 48.

⁷⁸*K. C. D.*, No. 1031.

⁷⁹They are all marked with an asterisk by Kemble.

⁸⁰Three are signed by one prefect (*K. C. D.*, Nos. 93, 145, 985); five by more than one (Nos. 73, 102, 148, 174, 178); and one by two praepositi (No. 187).

⁸¹*K. C. D.*, Nos. 86, 89, 108, 114, 121, 122, 127, 137, 152, 168, 1006; Birch, *Cartul.*, Nos. 208, 1334.

⁸²The abbreviations p., pr. may mean presbyter, princeps, or praefectus. As the document in question (*K. C. D.*, No. 156) is an agreement between a bishop and one who lays claim to episcopal lands and is issued at a synod, I conclude that the signatures referred to are presbyterial. Excepting the king, all the witnesses are churchmen.

⁸³Birch, *Cartul.*, No. 1331. This charter, dated 739, has an extensive preamble and boundaries in Saxon, which are unusual circumstances in this early period. The Saxon is the idiom of the tenth century rather than of the eighth. The copy dates from the eleventh century. However, the editors of the *Crawford Collection of Charters* (Preface, VIII) pronounce it "apparently genuine."

⁸⁴*K. C. D.*, No. 131. The original grant of Offa to Aldred seems genuine. But immediately after this follows Aldred's grant of the same lands to a church in Worcester. The only signatures are those of Aldred and three prefects. In the text they are called principes. Two of them witnessed a charter of the following year but no titles appear. The fact that the subregulus of the Hwiccas has three prefects is itself a suspicious circumstance.

mutilated to permit a final decision.⁸⁵ Aside from the great variety of titles joined to the signatures in Beorhtric's charter, there is nothing unusual about it. It is signed by two prefects.⁸⁶ The charter was issued by the king of Wessex not later than 790. A generation after, when Egbert was ruling, there were many prefects in that kingdom. Some of the grants of the great overlord are signed by four or five.⁸⁷ But the expansion of Wessex seems to have been fatal to the importance of the reeve. After Egbert's time there is not a solitary charter of genuine appearance that is witnessed by such an officer, till we reach the eleventh century; and the prefects of the Confessor's day were wholly different officials.

It is, indeed, possible that the English kings had more than one reeve before the rise of Wessex, but the charter evidence for such a statement is extremely weak. Nor can we base anything on the use of the plural in the inhibitory clause,⁸⁸ for the plural of *rex* is used as well as that of *praefectus*.⁸⁹

As to the tenure of the prefect's office, we know nothing definite. Of the individual reigns only those of Offa and Egbert give us any information on this point. In a Mercian charter of 775 or earlier, we find the signature of Eadbald *praefectus et princeps Offae regis*.⁹⁰ In 772 we meet an Emele *praefectus*.⁹¹ Two years later Brorda signs as prefect.⁹² In 779 the title is again affixed to Eadbald's name.⁹³ The next year Brorda is again *praefectus*.⁹⁴ There is a grant dated 784 to Esme *comiti praefecto meo*.⁹⁵ A charter of 788 and another of 796 are both signed by the prefect Brorda.⁹⁶ We thus know of four men

⁸⁵K. C. D., No. 133.

⁸⁶*Ibid.*, No. 158.

⁸⁷See K. C. D., Nos. 1031, 1033, 1035, 1036, 1037, 1039. The last is undated; the others are from the years 824, 825 and 826.

⁸⁸*Siquis uero regum aut principum uel praefectorum...conscriptam...frangere...temptauerit.* A representative formula from before 840. K. C. D., No. 242.

⁸⁹Similarly, the nullus praefectorum of Bede's *Epistola* (*Opera* II, 219) needs not be interpreted as meaning several contemporaneous reeves; it may mean several successive ones.

⁹⁰K. C. D., No. 127. Before this he usually appears as dux.

⁹¹Birch, *Cartul.*, No. 208. This is a grant of Sussex lands and Emele may have been the royal representative in that region.

⁹²K. C. D., No. 122. No. 121 has Brorda princeps.

⁹³*Ibid.*, 137.

⁹⁴Birch, *Cartul.*, No. 1834.

⁹⁵K. C. D., No. 147.

⁹⁶*Ibid.*, Nos. 152, 168.

who held the office during Offa's reign.⁹⁷ This evidence necessarily leads to one of two conclusions: Offa either had more than one reeve at the same time, or for some reason limited the term of office to a few years only. I am inclined toward the former view. The extension of Offa's authority over the neighboring small states may have called forth a plurality of reeves very much as among the Merovingian Franks there finally appeared several mayors of the palace, one for each of the leading divisions of the monarchy.⁹⁸ Furthermore, a period usually comes in the history of every court, when the same official dignity is given to several men. The charters issued by Egbert, the next great overlord, present a somewhat different aspect. Offa's grants were never witnessed by more than one prefect; Egbert's usually have the signatures of several such officials, five being apparently the normal number. The notable thing is that some of these prefects later appear as *duces*.⁹⁹ What the ducal office was during the early part of the ninth century has not yet been determined; but it seems likely that the holder was a military chief.¹

The position of king's reeve was evidently not only an important but also a lucrative one. As early as Bede's time, we find the prefects amassing great fortunes.² They frequently received landed gifts, such as the transfer of twenty-two hides to Wulfheard in 824.³ Still, as a rule, the estates granted to such officials of which we have any record were not large. From the early part of the ninth century we also have the will of Abba, a Kentish reeve, which shows him to have been a man of great

⁹⁷Eadbald, uncertain date, 757-775, 779; Emele, 772; Brorda, 774, 780, 788, 796; Esme, 784.

⁹⁸See Walts, *D. V. G.*, II, 2, 88.

⁹⁹In 824 Egbert gave Wulfheard, his prefect, twenty-two hides of land. *K. O. D.*, No. 1031. The next year Wulfheard is a *dux*. *Ibid.*, Nos. 1035-1038. Burhard, who was a prefect in 825 (*ibid.*, Nos. 1033, 1035) is a *dux* in 826. *Ibid.*, Nos. 1036-1038. The prefect Alhstan also became a *dux* that year. *Ibid.*, Nos. 1037, 1038.

¹There seems to be no doubt that there had been a century earlier a military official called heretoga or *dux*.

²Bede, *Opera*, II, 219. *Epistola ad Ecgbertum*. The author here complains of the purchase of monasteries by the prefects. See also p. 218, where the general practice is described and denounced.

³*K. O. D.*, No. 1031.

wealth.⁴ The prefect was, it seems, frequently, perhaps always, chosen from the aristocracy.⁵

To draw any satisfactory conclusions from the materials at hand seems almost impossible. As we cannot accurately determine the scope of the terms used, we are in constant danger of admitting as evidence facts that bear no relation to the subject before us. There seems, however, to have been a court-official in the eighth century whose functions, though primarily fiscal, might be and were extended as exigencies demanded. The original reeve probably had the royal estates in his charge in the same manner as the *gerefa* of later date. Most naturally, then, matters of fines, as part of his lord's income, would come under his superintendence. From this the step is but a short one to the actual assessment of fines. The same would apply to the collection of such dues and taxes as existed at the time. The growth of these at first rather unimportant functions may explain the change of this official from chief of the royal household to royal representative in the shire.

The Old English reeveship is no doubt analogous to the office of the Merovingian *major domus*,⁶ though the prefect never attained the importance of that dignitary except in one known instance. About the year 705, the Northumbrian king Eadwulf was deposed and Osred, a boy (*puer regius*) of only eight years, was raised to the kingship.⁷ In the first year of his reign, a synod was held at which a communication from the Pope was heard. After the reading of this letter 'all being silent, Berthfrith, the lord next to the king in authority,' asked the archbishop to interpret it.⁸ At the close of the deliberations this same

⁴Thorpe, *Diplomatarium*, 469-74. *K. O. D.*, No. 235.

⁵Abba gerefa's wergeld was 2000 thryms (1200 scillings), the worth of a king's thegn. The prefect of Bromnis was a comes. *Hist. York*, I, 52. Eadbald, who witnessed a number of Offa's grants, was "praefectus et princeps offae regis." *K. O. D.*, No. 127. One Ingeld was "dux et praefectus Æðelbaldi regis Merciorum." Birch, *Cartul.*, No. 203. A Kentish charter has the "Signum manus Egibaldi comitis atque praefecti." *K. O. D.*, No. 114. Esme was Offa's comes and prefect." *Ibid.*, No. 147. See also Birch, *Cartul.*, No. 448.

⁶Such is also Stubbs' opinion. See *O. H.*, I, 372. But Stubbs is in error when he identifies the earlier prefect with the later heah-gerefa.

⁷*Hist. York*, I, 80. Bede, *H. E.*, V, 18.

⁸*Hist. York*, I, 90: Post lectionem, cunctis tacentibus, Berthfrithus, secundus a rege princeps, ad archiepiscopum dixit: "nos qui interpretatione indigemus, quid Apostolica auctoritas dicat audire delectat."

princeps declared the will of the king and his princes.⁹ He is the only one whom the narrator represents as speaking among the secular lords. His position in the synod seems on the level with that of the archbishop. Still earlier he seems to have led Osred's forces in the revolt against the wicked Eadwulf. But this same Berthfridus is doubtless the Berctfrid whom Bede calls a *prae-fectus* and who led the Northumbrian forces against the Picts in 710.¹⁰

That there were several of these prefects in some of the kingdoms toward the close of the eighth century seems evident. Apparently the importance of the office decreased as the number of holders increased. In the next century, the prefect disappears from among the charter witnesses; his title also gradually disappears from the inhibitory formulas.¹¹ After the accession of Alfred reeves multiply. Some are clearly at the head of shires, or towns, or boroughs; others appear to have control of royal estates.¹² The relative positions of these different classes of reeves is not so easily determined; nor does the subject lie within our field at present.

One of these, however, we cannot pass by: the high-reeve. This officer is mentioned several times in the sources, but the nature of his office is very obscure.¹³ The first mention of a high-

⁹*Hist. York*, I, 91: Haec ea loquente, Berechtfrithus, praefatus regis princeps, respondens dixit: "Haec est voluntas regis et principum ejus ut mandatis Apostolicae sedis...obediamus."

¹⁰Bede, *H. E.*, V, 24.

¹¹When the prefect reappears in the tenth century charters, it is as shire-reeve.

¹²After a festival at Ramsey dux Æthelwin called a local council at which Saint Oswald was received by "cunctis praefectis et militibus miro affectu." *Hist. York*, I, 465. Life of St. Oswald; an almost contemporary biography. At Edgar's coronation were present "cuncti duces, praefecti et iudices." *Ibid.*, I, 436. He is praised and honored by 'pious dukes, famous thegns (militibus) and wealthy prefects.' *Ibid.*, I, 438.

¹³Kemble doubts that the office of high-reeve ever existed. He thinks the title was probably equivalent to that of the shire-reeve (*Sax. in Eng.*, II, 157, note); he also suggests that the high-reeves may have been employed as missi dominici (p. 156). Stubbs holds that the offices of prefect and high-reeve were identical: "The first of these [major] answers to the praefectus or heah-gerefa of the Anglo-Saxons." *O. H.*, I, 372. Green looks on the high-reeve as a most important and exalted official. "A second stage in the progress of kingly rule was marked by the creation, under Æthelred, of the high-reeve, the first effort of the crown to create a minister of state, a deputy of its executive and judicial power beside the hereditary ealdormen, etc. Fiercely opposed, this institution became permanent under Cnut in the "vice-royalty" of Godwine; under the Confessor in that of Harold; and from it, under the Norman kings, sprang the justiciar." *Conqu. of Eng.*, 524.

reeve is in the Chronicle for the years 778 and 779. The office, therefore, must have existed at the time of the compilation of this work, or prior, to 900. Not knowing the sources of the Chronicle for this period, we can know neither the name nor the nature of the office that the Wessex historian calls *heah-gerefa*. But as the occasion was that of a revolt followed by dynastic changes, we should infer that the high-reeves who were slain at that time were military officials.

Literally translated *heah-gerefa* is high-reeve or better arch-reeve. From the title we should infer that the high-reeve bore the same relation to the reeves as the archbishop to the bishops. This, however, cannot be shown. But they manifestly were reeves of higher rank. In the North-people's Law, the wergeld of a high-reeve is placed at half that of an ealdorman and double that of a thegn.¹⁴ Nowhere else is there any indication that the reeve had a wergeld of his own; in the only instance known to me where his worth is mentioned, it is the same as that of the thegn.¹⁵ It is significant that this officer is called the king's *heah-gerefa*, while the word *cyninges* does not appear before the titles of the ealdorman or the thegn or any of the other classes mentioned in the same connection.

In one of Eadred's charters we find the signature of *Osulf heahgerefa*.¹⁶ Three years later we find a document signed by *Osulf bebb*,¹⁷ and another witnessed by *Osulf ad bebb. hehgr*.¹⁸ Perhaps the meaning is that Osulf was high-reeve at Bebban-burh, a fortress of great importance in Northumbria.¹⁹ Half a century later the Chronicle records the death of a number of Æthelred's chief men among whom were 'Æthelweard, the king's high-reeve...and Leofric from Whitechurch and Leofwine the king's high-reeve.'²⁰ Later in the same year we find 'Kola the

¹⁴The date of this law cannot be definitely fixed, but it cannot be much later than 900, as it supposes the existence of the 'holds' a landed aristocracy of Norse origin, which, however, soon seems to have disappeared from England. See Schmid, *Gesetze*, Anhang VII, 2:4; Einleitung, LXV.

¹⁵See Abba Gerefa's will, *K. O. D.*, No. 235.

¹⁶*Ibid.*, No. 411 (A. D. 946).

¹⁷*Ibid.*, No. 426.

¹⁸*Ibid.*, No. 424.

¹⁹Slimeon of Durham, *Historia Regum*, II, 45: *Bebba vero civitas urbs est munitissima, non admodum magna, sed quasi duorum vel trium agrorum spatium, habens unum introitum, cavatum et gradibus miro modo exaltatum.*

²⁰1001: And ðær wearð Æðelweard heah-gefera (I) ofalegen and Leofric æt Hwitecircean and Leofwine cinges heahgerefa.

king's high-reeve and Eadsige the king's reeve opposing them [the Danes] with the [English] host.²¹ The juxtaposition of reeve and high-reeve clearly indicates a difference in their official dignities. The following year the ealdorman Leofsige slew Æfic, the king's high-reeve.²² In a charter dated 1012, Æthelred speaks of Æfic as his prefect and *primas inter primates meos*.²³ Thus we have several titles referring to the same person, all indicating an exalted station. With the exception of Æfic of whom we can affirm nothing, the high-reeves of Æthelred's reign seem to have been military leaders.

In the Blickling Homilies from the same period, the title is used as we at present use the word ruler in an exalted though general sense.²⁴ The term is applied to Biblical officers concerning whose functions the homilist could have no adequate ideas. The same is true of Ælfric's use of the word. He very frequently calls the prefect of the city of Rome a high-reeve.²⁵ We should be greatly in error were we to imagine from this that this office was thought similar to that of an English port-reeve. The governor of the Eternal City, the center of Christendom and the capital of the world, could not be a ruler of ordinary dignity. The homilist also speaks of high-reeves who were sent out by the emperor to govern distant regions.²⁶ In Ælfric's glossary the term *heah-gerefa* stands for *legatus* and *proconsul*.²⁷

²¹And þær wæs Kola ðæs cyninges heah-gerefa and Eadsige ðæs cyninges gerefa togeanes him mid ðære fyrde...

²²*A.-S. Chron.*, 1002. *Flor. Wtg.*, I, 155-56:..noblem virum Eafic, summum regis praepositum occidit.

²³*K. C. D.*, No. 719: Nam praefectum meum Æficum quem primatem inter primates meos taxauit non cunctatus in propria domo eius eo inscio perimere...

²⁴See pp. 171:17, 177:14.

²⁵When Gregory protested to the emperor against his election to the papacy, Germanus, the emperor's high-reeve—"ðæs caseres heah-gerefa"—destroyed the letter. *Homilies* II, 122. Germanus seems to have been praefectus urbis. In the Passion of Saint Sebastian we are told of a high-reeve Chromatius 'who ruled the city of Rome under the emperor.' *Lives*, I, 126. Cf. *ibid.*, p. 118. Sempronius, the prefect of Rome, is called heah-gerefa throughout the homily on Saint Agnes. *Ibid.*, I, 170 ff. Nero's high-reeve Agrippa advised and urged the execution of Saints Peter and Paul. *Homilies*, I, 382. The high-reeve mentioned in the homily on Saint John was also a city official. *Ibid.*, I, 72-74. See also *ibid.*, pp. 416-36.

²⁶Domitian sent one Sisinnius, a high-reeve, 'a very fierce devil with many companions to the Frankish kingdom.' *Lives*, II, 182, St. Denis. Commodus sent Philippus to govern Alexandria and made him high-reeve over all Egypt. *Ibid.*, I, 24-26. Other illustrations could be produced.

²⁷*Vocab.*, 114:40; 183:29.

There can be no doubt that there was, during the period of Saxon ascendancy, an office that might be called a high-reeveship. The incumbent was more than a common reeve as appears from his *wergeld*. He is the king's high-reeve and as such was perhaps the highest appointed officer in the realm.²⁸ As to his functions, two significant facts are brought out: in nearly every case do we find him exercising military authority or at least connected with movements that are distinctly warlike; the high-reeves of the homilies were officials appointed directly by the emperor and sent to govern important cities and large outlying regions. Together these facts point to a dignity somewhat like that of the Carolingian *markgraf*.²⁹ The only English region that might require the rule of such an official would be the North-country or Danelaw. It is by no means unreasonable to suppose that the rebellious Danes were allowed less local self-rule than their fellow-subjects south of the Thames. In this connection it is also interesting to note that nearly all the definite instances of an English high-reeveship are Northumbrian.³⁰ It should be added, that this officer does not appear until after the prefect has disappeared. It seems most likely, therefore, that the high-reeve's office is a relic of the prefect system of the eighth century, and that as such it continued in part the functions of the earlier king's reeve. The suggestions that it might correspond to that of a *missus*, a mayor of the palace, or a modern viceroy have no support in the sources.

²⁸ Unless we regard the ealdorman as an officer receiving his appointment from the king.

²⁹ Cf. *Waltz, D. V. G.*, III, 369 ff. For a somewhat similar view to the one advanced above, see Ramsay, *Found. of Eng.*, I, 355. The author, however, does not discuss the general subject.

³⁰ *A.-S. Chron.*, 778, 779; Schmid, *Gesetze*, Anhang VII, 2, 4; *K. O. D.*, Noa. 411, 424, 426. The high-reeves mentioned in the *Chronicle* for 1001 were with the royal army and cannot be located in any particular part of the kingdom.

CHAPTER V.

THE SECULAR DIGNITARIES OF THE ROYAL HOUSEHOLD.

The members of the royal court were, as we have already seen, usually called thegns. All these, however, were not of equal rank. What marked the distinction in earlier times we do not know; but the use of such terms as 'high-thegn' and 'ruling-thegn' clearly indicates that all the king's men were not equally high in royal favor.³¹ In time certain offices arose within the household, the relative importance of which formed a basis for grouping the membership. At first these offices can not have ranked very high,³² but they gradually grew in dignity and their holders became possessed of great power, though the development in this direction did not go so far among the Anglo-Saxons as among the Franks.

At the court everything centered about the king's own person. In him all power resided, though at times he might share it with certain members of his immediate family. Of these we should first of all think of the queen. Her position, however, is not very clear: in *Beowulf* we find her seated beside the king,³³ and at one time a queen actually ruled in Wessex;³⁴ but Asser tells us that not since the days of the great Offa had a queen sat enthroned beside an English king.³⁵ Ælfric states, in his homily on Queen Esther, that the king ordered his men to fetch Vashti—'that she should come to him wearing her royal helmet, as such was their custom, that the queen wore a royal helmet on her

³¹ *Satan*, 66; *Menologium*, 130; *Beow.*, 1308; *Judith*, 242.

³² It appears from the etymology of such words as *seneschal*, *beerschal* and *marshal* that these offices were originally held by slaves.

³³ *Beow.*, 641.

³⁴ *Sexburh. A.-S. Chron.*, 672.

³⁵ *Petrie's Monumenta*, 471.

head."³⁶ The Anglo-Saxon word for crown or its equivalent is *cynehelm*, king's helmet. The passage is significant, as it necessitates the inference that the English queen, even as late as the year 1000, was not crowned. But there are indications that the Anglo-Saxon queens had somewhat extensive households of their own.³⁷

The position of the royal princes is as indefinite as that of the queen. That the king sometimes associated the heir-apparent with himself in the government is a well-known fact,³⁸ but such can hardly be called the rule. The princes evidently had a body of servants of their own apart from the court in general. A suggestion of this is found in *Beowulf*: the bereaved father looks in sorrow on his son's deserted banquet-hall.³⁹ Two documents from Æthelred's reign mention the seneschals of the ethelings Edmund and Æthelstan.⁴⁰ After the Conquest we find that similar privileges were enjoyed by the king's daughters.⁴¹

Passing from the royal family to the inner circle of court officials, we at once meet the question, whether the Old English kings had what may be called a *major domus*. This has been answered in part in the preceding chapter on the king's reeve. The prefect, at least in his public capacities, strikingly resembles the Merovingian major. Bede calls Ercenwald, the Frankish major domus a patrician;⁴² but we must not infer from this that all the patricians of the English sources were such mayors. William of Malmesbury cites a letter addressed by Alcuin to *Osberto patricio Merciorum*;⁴³ but most likely the title was purely an honorary one. An official that might be called a *major domus* in a limited sense as head of the queen's household is alluded to in Bede: the monk Owini came 'with the queen Æthelthryth from the kingdom of the East Angles; he was the chief of her thegns

³⁶*Bibl. der ang. Prosa*, III, 93: swa swa heora seodu was, þæt seo cwen werode cynehelm on heafode.

³⁷The translator of Bede's history (*H. E.*, II, 9) speaks of a queen's household — "þære cwenne hirede." Æthelflæd, second queen of Edmund I, in her will gives seven hides to her reeve and two hides to each of her two priests. Birch, *Cartul.*, No. 1288. Among the witnesses to one of the Confessor's charters we find a queen's butler. See *K. O. D.*, No. 813.

³⁸See Plummer, *Alfred*, 89-91.

³⁹*Beow.*, 2455.

⁴⁰*K. O. D.*, Nos. 722 and 1302.

⁴¹*Domcaday*, I, 49: Golsfridus filiae regis camerarius.

⁴²*H. E.*, III, 19.

⁴³*Gesta Regum*, 73.

and the governor of her household.⁴⁴ In one of the manuscripts of Alfred's translation, he is called *ofercaldorman*; in another, 'ealdorman over all her house.' This leaves us somewhat in doubt as to whether the Anglo-Saxons looked on his position as a definite office; the probabilities are that they did not. A century later, we are told that Dunstan was counted among the palatine princes—*palatinos principes*—at Edmund's court;⁴⁵ but this can mean only that he was one of the king's favorites.⁴⁶ Among those whom Harthacnut sent to exhume the body of his brother Harold, Florence of Worcester names Stir *major domus*.⁴⁷ But in a charter from the previous reign we read that the abbot of Canterbury had bribed Steorra, the king's *rædesmann*, to pay him a third of the tolls at Sandwich.⁴⁸ Stir and Steorra are probably variant forms of the same name. The person in question had evidently once been one of the king's local officials. Whether he stood in any closer relation to the court later on cannot be determined.⁴⁹

We shall have to conclude that, so far as we know, a *major domus* in the Frankish sense of the word never existed in England. The king's reeve might have developed into a mayor, but some great constitutional change (perhaps the rise of the shire system) seems to have arrested the growth of his power and brought on a rapid decline. At other times, certain great ecclesiastics⁵⁰ or secular lords⁵¹ appear to have wielded the power of such an official, but the office itself did not exist. English conditions were fundamentally different from those in Frankland; the limited extent of the Anglo-Saxon kingdoms made it almost

⁴⁴*H. E.*, IV, 3: . . . eratque primus ministrorum et princeps domus ejus.

⁴⁵*Memorials of St. Dunstan* (London, 1874), 21.

⁴⁶Birch prints a document (*Cartul.*, No. 1057) alluding to a "princeps domus regis" at Edgar's court; but the charter is clearly a forgery. See *Eng. Hist. Rev.*, VI, 736; Stevenson, *The Old English Charters to St. Denis*, 47.

⁴⁷*Flor. Wig.*, I, 194.

⁴⁸*K. O. D.*, No. 758 (1038, Harold Harefoot). . . and begeat . . . æt Steorran þe þa wæs þæs kinges rædesmann . . .

⁴⁹The Abingdon chronicler speaks of a "major regiae domus Edricus" who acted as such in the early part of Æthelred's reign. But as the writer flourished in the thirteenth century no importance can be attached to his statement. See *Historia Monasterii de Abingdon*, I, 357; *Anglia Sacra*, I, 166.

⁵⁰Such as Wilfrid and Dunstan. For the position of the latter see *Memorials of St. Dunstan*, 95.

⁵¹*Hist. York*, I, 428: Dux autem Æthelstanus erat pater ejus, quem semiregam appellabant proceres omnesque populi, qui tantae potestatis extitit, ut regnum et imperium cum rege tenere sua ratione dicitur.

impossible for such an official to attain any high degree of prosperity. There does seem to have been at times a head of the royal household, a ruling thegn of some importance, but his functions must have been almost wholly palatine.⁵³

Among the worthies of the royal court, the first one of real prominence that we meet in the sources is the sage of the king's hall, the *þyle*. We find him in *Beowulf*, where his name is given and such prominence accorded him, that all sorts of conjectures have been made as to his duties.⁵⁴ So far as is known, the 'thyle' appears in no other Anglo-Saxon source;⁵⁵ consequently, our information regarding him is very meager. In a Latin and Anglo-Saxon glossary of the eleventh century, *oratores* is translated *þylæss*.⁵⁶ This probably has given rise to the idea that Unferth was Hrothgar's spokesman. But that king was abundantly able to speak for himself; in oratory he might rival Ulysses, and he even tried his hand at minstrelsy.⁵⁷

Etymologically 'thyle' is the same as the Norse *þulr*, the earliest record of which is probably found in the runic inscription on the Snoldelev Rock, which, according to Wimmer, dates from the earlier years of the ninth century (800-825).⁵⁸ The Eddic references are somewhat later.⁵⁹ From these it will appear that the characteristics of Norse 'thulship' were age, wisdom, extended knowledge and a seat of honor.⁶⁰ As to age we can affirm nothing in Unferth's case; but there seem to be other 'orators' mentioned

⁵³For a somewhat different view, see Schmid, *Gesetze*, 665.

⁵⁴The definitions of thyle given in the glossaries to the various editions of *Beowulf* are very general and non-committal. Grein considers Unferth a "Redner." Heyne adds to this: "der Lehnsmann am Hofe, der die Unterhaltung zu führen hat." Morris and Wyatt think him "The spokesman of Hrothgar." Earle is more definite (*Deeds of Beowulf*, 126): "Unferth was not exactly a minstrel, but a superior in the same general line; orator, historiologist, raconteur."

⁵⁵Unless it be in *Widsith*, 24. Cf. *Modern Language Notes*, IV, 209-12.

⁵⁶*Vocab.*, 458:16.

⁵⁷*Beow.*, 2109:10.

⁵⁸*Die Runenschrift* (Berlin, 1887), 304, 337.

⁵⁹*C. P. B.*, I, 24. *Hávamál*, 1: Mál es at þylja þularstóli á. 'It is time to speak from the thular-stool.' *Ibid.*, I, 19: at hárum þul hlæ þu aldregi. 'Never laugh at the hoary thul.' See also *Ibid.*, I, 29, 39, 62.

⁶⁰I translate the following from Jónsson's *Litteraturhistorie*, I, 79: "The word thulr originally meant a sage or orator. Aged men who had lived lives rich in experience, who had studied and learned all conditions of men, who were in possession of all the knowledge of the time as to the gods and their attitude toward the world and humanity, and who, when requested, sitting in the thular-seat, imparted their knowledge—such men were the thulir." Cf. Müllenhoff, *Deutsche Altertumskunde*, V, 288 ff. Müllenhoff rather overstates the importance of these 'orators'.

in Beowulf, one of whom, at least, was full of information and old in years.⁶⁰ Again, in the hero's account of the festivities at Heorot, we are told that 'an old Scylding, who had heard many things, told tales from afar.'⁶¹ That Unferth 'thyle' was also possessed of information from abroad appears from his circumstantial knowledge of Beowulf's swimming-match.⁶² As to his wit and abilities we have Beowulf's own testimony: 'therefore in hell shalt thou suffer damnation though thy wit is capable.'⁶³ He also occupied a seat of honor: he sat at the king's feet⁶⁴ where later, we are told, sat the king's minstrel after the 'sage' had passed into history. In a poem 'Concerning the Fates of Men' we read: 'one of them shall sit with the harp at his lord's feet receiving gifts.'⁶⁵

The 'thyle'-institution was specifically Teutonic; but at the opening of the historic period it seems everywhere on the wane. Two reasons may be assigned for this: as a counselor, as one who knew the will and attitude of the higher beings, he was being superseded by the Christian priest; as a narrator of heroic events he had a dangerous rival in the *scop* or minstrel. The 'thyle', as a rule, confined himself to the past; the *scop* glorified his own age.⁶⁶ He was a singer, a poet, which the 'thyle' was probably not. Ælfric uses the word *scop* in his grammar to translate such terms as *poeta* and *vates*.⁶⁷ In Alfred's Orosius it is used for

⁶⁰When peace is made between the Danes and the Heathbards, and the truce is to be confirmed by royal nuptials, a Danish warrior brings the bride to the home of the Heathbard prince. But hanging at his side the Heathman sees a sword taken by the enemy from their own nation. 'Then speaks at the banquet one who sees the jewel, an old ash-warrior who remembers it all, the spear-death of men.' *Beow.*, 2029-43.

⁶¹*Ibid.*, 2105-6.

⁶²Soon after Beowulf arrived at Heorot, the jealous Unferth 'unbound the battle-rune' and a quarrel began. He taunted the hero with having lost in the swimming-match: the result was, however, that Beowulf got the best of the 'fighting'. *Ibid.*, 499 ff.

⁶³*Ibid.*, 588-89.

⁶⁴*Ibid.*, 499-500: Unferð mæpelode, Ecglafe's bearn. þe sæt fotum sæt frean Scyldinga.

⁶⁵*Bi Manna Wyrdum*, 80: sum sceal mid hearpan sæt his hlaforðes fotum sittan, feoh þigean.

⁶⁶Thus it was in the North at least, where the scald, singing the exploits of his lord, seems to have overshadowed the thul, who clung more closely to the sagas. See Jónsson, *Litteraturhistorie*, 81, 321 ff.

⁶⁷Ælfric's *Grammar* (Zupitza), 24:6, 77:2-3, 24:2, 215:8-9. The word occurs in the glossaries of the tenth and eleventh centuries with similar definitions. See *Vocab.*, 188:28.

historicus,⁶⁸ and is also applied to Terence and to the singer Tyrtæus of Spartan fame.⁶⁹ In Alfred's *Metra* it is applied to Vergil.⁷⁰

It is not safe to affirm that all the *scops* lived at some princely court; still, most of our knowledge of these craftsmen relates to such as struck the harp in the royal hall. The minstrel is prominent in *Beowulf*. He sings a great variety of things: the creation of the world and the fall of man;⁷¹ sagas from hoary Teutonic times;⁷² *Beowulf's* journey and perhaps his exploits of the night before.⁷³ His instrument was the harp, the gleewood. Where his seat was we are not told; but in the poem cited above, and which is doubtless of a later date than *Beowulf*, the singer is represented as sitting at his lord's feet.⁷⁴

We are accustomed to look on the bard as a wandering singer, traveling from manor to manor and from court to court. The *scop* must have been somewhat of this character; Widsith (if that be his name) was such a wandering minstrel. The poem that bears his name is little more than a list of tribes and kings that he had visited, which list some well-meaning interpolator has padded most generously. In return for the kindness of his queenly patroness Ealhild, he sang her praises 'through many lands.'⁷⁵ He seems to have had a companion-poet on his journeys:

'Then we two, Scilling and I, with clear voices
Before our victorious lord lifted up the song.'⁷⁶

But not all these singers were wanderers; some seem to have been permanently employed at some princely hall. Such a one was Deor, who lost his position and tried to console himself by comparing his own ill-fortune with that of others. For 'many winters' he had a good lord and good service; he had lands for his support. Then came Heorrend, 'a song-skilled man,' and took everything, lord, lands and honors.⁷⁷

⁶⁸Sweet's Edition, 32:28.

⁶⁹*Orosius*, 56:29.

⁷⁰*Metra*, 30:4. *Bibl. der ang. Poete*, III, 338.

⁷¹*Beow.*, 90 ff.

⁷²*Ibid.*, 874 ff.; 1068 ff.

⁷³*Ibid.*, 871-74.

⁷⁴*Bi Manna Wyrðum*, 80.

⁷⁵*Widsith*, 97-99.

⁷⁶*Ibid.*, 103-04.

⁷⁷*Deor's Lament*, 38-41.

From the evidence at hand we may conclude that the *scop* was a singer of the old heroic lays⁷⁸ and a poet who told the notable events of his own day in verse. Though the bard and the 'thyle' differed essentially in both aims and themes, there is no reason why the same person might not sometimes act in either capacity: to draw the lines firmly between the two seems impossible. In the heroic period the minstrel was a personage of some consequence; but when the English people came into the full light of history, the sage and the singer were both on the decline, though the latter may have lingered somewhat longer than the former. Most likely the minstrel remained an interesting member of the princely household, but he is soon overshadowed by other dignitaries.⁷⁹

A Mercian charter dated 811 has the signature of one Æthelheah *pedes sessor*.⁸⁰ This title at once suggests the 'thyle,' Unferth, who sat at the feet of the Danish king;⁸¹ but the association is no doubt a fancied one. In a document of the following year Æthelheah appears as *pedisecus*.⁸² Cuthred *pesseor* (!) witnessed a grant of the same year,⁸³ but in another charter of uncertain date he, too, is *pedisecus*.⁸⁴ The title occurs in three other Mercian documents dated 824,⁸⁵ 825⁸⁶ and 831⁸⁷ respectively. Eastmund *pedisecus*, who signed a Kentish charter in 856,⁸⁸ seems to have been the last of his class to witness a grant of which we

⁷⁸Deor's repertoire is to some extent given in his 'Lament'.

⁷⁹I find no reference to court poets in English sources later than 800. They are alluded to in the poems *Bi Manna Cræftum* and *Bi Manna Wyrðum* which some have ascribed to Cynewulf. His authorship is by no means certain, but the poems seem at least to fall within the Anglian period of Old English literature which can hardly extend much beyond the eighth century. For the various views on this subject see Wülker, *Grundriss*, 196-200.

The court minstrel reappeared in England with the Danish conquest. Some of the songs sung at Cnut's court have been preserved. See *O. P. B.*, II, 155 ff.

In the Welsh laws of Howell the Good, we find an elaborate company of entertainers provided for under the leadership of the bardus familiae. See *Ancient Laws of Wales*, 771.

⁸⁰*K. O. D.*, No. 196.

⁸¹*Beow.*, 500. Cf. Kemble, *Sax. in Eng.*, II, 117.

⁸²*K. O. D.*, No. 199: Sign[um] man[us] Æðelheah ped[e]sec[us].

⁸³Birch, *Cartul.*, No. 340: Signum manus Cuthred[us] pesseoris.

⁸⁴*K. O. D.*, No. 1028: Cudred pedise[us].

⁸⁵Birch, *Cartul.*, No. 378: Ego Bola pedise[us].

⁸⁶*K. O. D.*, No. 220: Ego bola pedise[us].

⁸⁷*Ibid.*, No. 227: Ego ælfred pedise[us].

⁸⁸*Ibid.*, No. 281: Ego eastmund pedese[us].

have any record.⁸⁹ Turning to the glossaries we find *pedisequus* and *sequipedas*, the one used as the equivalent of thegn, the other of *ministri*.⁹⁰ The masculine form of the word is, however, of rare occurrence except in the charters. More common is the feminine *pedissequa*, which an eighth century gloss renders 'thignen,'⁹¹ maid-servant. This significance the word retained till the close of the Saxon period.⁹²

It will be observed that the use of the title *pedisecus* is practically limited to Mercian documents of the first half of the ninth century. In this same period the title *minister* also begins to appear in the charters. But this title, so common in the next century, is not used by any one subscribing to a grant signed by a *pedisecus*. And I do not believe that the word *minister* occurs in any of the documents referred to except the last, which records a grant to a king's *minister*.⁹³ It is my opinion that *pedisecus* is a localism and simply a pedantic translation of thegn. That there ever was an official at court bearing such a title is extremely improbable.⁹⁴

Of the four traditional chiefs of the Teutonic king's household, the seneschal, the marshal, the chamberlain and the butler, we hear but little before the tenth century.⁹⁵ The butler and the

⁸⁹The title occurs in three tenth century charters, twice in the text and once in a group of titles following the episcopal signatures: (a) A grant by Eadred (946) to "Wulfrie pedissequus". *K. C. D.*, No. 411. The language and style are very inflated. The word *minister* is nowhere used. (b) A grant to "pedissequus Uhtred Child". The style of this charter is unusual, as it seems to be "alliterative and poetic", but otherwise the document seems normal. Birch, *Cartul.*, No. 911. (c) ...et ceteri duces disciferi, pedissequi et ministri. *Ibid.*, No. 1211. This may be the statement of some later copyist. Cf. No. 911.

⁹⁰*Vocab.*, 507:32, 494:2.

⁹¹*Ibid.*, 38:15.

⁹²*Ibid.*, 262:30, 294:23, 466:38, 467:1; *Flor. Wig.*, I, 207 (Queen Edith's maid); Liebermann, *Gesetze*, I, 172, Quadripartitus (in opposition to domina).

⁹³*K. C. D.*, No. 281.

⁹⁴Kemble considers the *pedisequus* a court official, but cannot determine his functions. *Sax. in Eng.*, II, 117. Von Maurer believes that *pedissequi* was the general term for the inferior servants at court. *Hofverfassung*, 196.

⁹⁵On the subject of the higher palace officials writers on English history give us nothing beyond a few general statements. Says Kemble (*Sax. in Eng.*, II, 105-06): "The four great officers of the Court and Household in the oldest Germanic kingdoms are the Chamberlain, the Marshal, the Steward and the Butler". The error here lies in the use of the word "oldest". Stubbs (*O. H.*, I, 372-73) speaks of "the praefectus or heahgerefa", disc-thegn, cup-bearer and horse-thegn. But, as has already been shown, to equate the praefectus and the Frankish major domus, as Stubbs seems to do, is rather misleading. Freeman (*N. C.*, V, 287) agrees with Stubbs except in that he uses the term *staller*

chamberlain appear to be mentioned in *Beowulf*, but the poet says nothing of a marshal or a seneschal. In his will Alfred remembers his household thegns in the following words: 'And the men who serve me, to whom I recently at Eastertide gave wages (*feoh*: property), two hundred pounds let there be given to them; and let it be divided among them, to each one as would be due him after the manner in which I recently divided [wealth] among them.'⁹⁶ This implies that the royal servants were not of equal rank and dignity, but of the classification we are told nothing. But from about the middle of the tenth century, we have a most important document, the will of King Eadred, which gives us most valuable information on this point. The order of bequests is as follows: To the state; to the archbishop; to the bishops and ealdormen; to the seneschals, chamberlains and butlers; to the king's priests; to his stewards; to other servants (and kinsmen?).⁹⁷ The grouping of the palace officials together with the amount of each bequest shows conclusively that three, the seneschal, the butler and the chamberlain, were the high court-officials in Eadred's time.⁹⁸ There is no mention of a constable or a marshal.

Of these three dignitaries, the butler is the first to appear in the sources. The Anglo-Saxon word for cup-bearer is *byrel* or *byrele*, one who bears. Possibly this word also includes the seneschal idea, but that can hardly be the case with *beor-scealc*, which is also used. It seems that the cup-bearers of the earliest

for horse-thegn; the history of stallership will be given in a succeeding chapter. Ramsay considers the horse-thegn and the staller two different officials; he speaks of 'the Burthegn, the Discthegn, the Horsthegn and the Stallere or Constable'. *Found. of Eng.*, I, 525. Green has a different grouping: "The hordere, the staller, the dishthegn and the cupthegn". *Conqu. of Eng.*, 523. I propose to show in the course of this chapter and of chapter VII that the staller was not known in England in Alfred's day as has been claimed, that the hoarder was never a court official in Saxon England, that the Confessor's chamberlain also acted as treasurer, and that the marshal was not a very important functionary before the Norman Conquest.

⁹⁶*K. O. D.*, No. 314 (880-885):and ðam mannun ðe me folgiað, ðe ic nu on eastertidum feoh sealde, twa hund punda agyfe man him; and ðæle man him betweoh, sælcum swa him to gebyrian wille, sæfter ðære wisan ðe fæc him nu ðælde....

⁹⁷*Liber de Hyda* (London, 1866), 153-55; Birch, *Cartul.*, No. 912.

⁹⁸The bishops and ealdormen are given 120 mancuses each; the three high court officials 80; the mass-priests 50; the stewards 30, etc.

....and sælcun gesettan discōegne and gesettan hrægðene, and gesettan birliele, hund eahtatig mancusa golda. *Liber de Hyda*, 153-55; Birch, *Cartul.*, No. 912.

sources were women;¹⁰ but when we come to the age of the Beowulf poem, we find that men were also employed in the service.¹ The Danish chieftain necessarily had several, perhaps many, butlers;² and in the later narrative sources the word cup-bearer, as a rule, also appears in the plural form. When Æthel-flæd entertained King Æthelstan, the butlers filled cups and beakers of all sizes and bore to the feasters till the day was ended.³ The royal thirst must have been intense, for it required a miracle to slake it. Folcard tells us of a banquet given by Archbishop John to King Osred and his nobles; the cup-bearers found the supply of mulse, wine and beer inexhaustible.⁴ Ælfric in his homily on Esther also uses the plural form.⁵

It seems probable that over all these cup-bearers there was a chief butler. Perhaps Æschere held such a position at Hrothgar's court; for a common butler he has too many titles.⁶ At Archbishop John's banquet referred to above, the king called the butler Brihtred to him and praised him for his excellent service.⁷ In the supplement to Ælfric's vocabulary, *magister calicum* is translated *yldest byrla*.⁸ Asser tells us that Alfred's mother was a 'daughter of Oslac, Æthelwulf's famous butler.'⁹ It seems reasonable to assume that the cup-bearers whose signatures ap-

¹⁰In the Laws of Æthelbriht (14, 16) fines are decreed for violating the honor of an eorl's or churl's bierele. Nothing is said about the maid who bore the king's cup, though a parallel law relates to a similar crime against the king's maid (10). It is more than likely, however, that some of those who served in the king's hall were women. It seems that the feminine head of the household had some important duties in this connection. Hrothgar's queen passes the cup to the doughty ones in Heorot. *Beow.*, 615, 1169, 2016 ff. The queen of the Geats performed a similar service in Hygelac's hall (1981-82). Hrothgar's daughter also bore the ale-stoop (2020-21). The wife of a comes who was miraculously healed by John of Beverly (A. D. 686) immediately arose and offered the cup to the bishop and his men. Bede, *H. E.*, V. 4. The same custom prevailed in the North. See *O. P. B.*, I, 50, 338.

¹*Beow.*, 495: *þegn...se þe...scencte sclr wered.*

²*Ibid.*, 1161: *Byrelas sealdon win of wunder-fatum.*

³*Memorials of St. Dunstan*, 18: *...pincernis, ut assolet in regalibus convivis, cornibus, sciphis, aliisque indiscretæ quantitatis vasibus totum diem propinantibus.*

⁴*Hist. York*, I, 254-5. But Folcard wrote after the Conquest.

⁵*Ibid. der ang. Prosa*, III, 93.

⁶He is called *beorscealc*, *æbelling*, *aldorþegn*, *runwita*, *rædbora*, the king's *eaxl-gestella*, and is *salu* to be of *gesibes* had.

⁷*Hist. York*, I, 255.

⁸*Vocab.*, 189:29. Cf. *Book of Genesis*, 40:9.

⁹*Petrie's Monumenta*, 469.

pear in charters were chief butlers.¹⁰ In Eadred's will, however, no distinction is made between chief and subordinate. Eighty mancuses are given 'to each legally appointed butler,'¹¹ thus implying equality as well as plurality.

The functions of butlership were such as we should naturally associate with the office. The cup-bearers performed their duties at the banquets in the royal hall. The first cup was offered to the king. Ælfric tells us in his life of Saint Martin that at Maximus' banquet they bore to Caesar,

'As it customary was, wine on a dish;
But he ordered the butler to offer it first to Martin.'¹²

The principal beverages served were mead and beer, though ale, wine and mulse were also counted necessary to successful feasting.¹³ We should infer that the chief butler was also charged with the duty of keeping the king's cellar well supplied with tuns and casks.¹⁴ We do not know that he had any other duties. The butler's office was no doubt an honorable one,¹⁵ but it never

¹⁰*K. C. D.*, No. 86. A Kentish charter dated 740 and signed by the butler Dunwalh. Kemble believes it genuine but admits that the year and the indication disagree. I should say that the use of the title *pincerna* at such an early date is a very suspicious circumstance. *Ibid.*, Nos. 148, 265, 320; rejected as forgeries by Kemble. Birch, *Cartul.*, No. 328. Given by Ceonulf of Mercia and Kent, 809. This is the only charter dated before 958 and bearing a butler's signature that can seriously claim to be genuine. *K. C. D.*, No. 1214 (958). Signed by "Ælfwig regis *pincerna*". Eadwig gives two *cassaturas* to Keneric his *propincernarius*. What this title signifies is not clear. Du Cange does not have the word. *Ibid.*, No. 1224 (959). Signed by Æthelsige *pincerna*. *Ibid.*, No. 1294. Æthelred (1000) gives lands to Abingdon monastery "*alcut Wulfgarus meus uidelicet pincerna obtinuit*". Cf. *ibid.*, No. 1280. *Ibid.*, No. 813. Edward, 1062: "*Ego Wigodus regis pincerna. Ego Herdingus reginae pincerna*". This is perhaps the only queen's butler in Anglo-Saxon times of whom we have any record.

¹¹Birch, *Cartul.*, No. 912.

¹²Ælfric's *Lives*, II, 258. It would seem that the use of the word *byrel* in this passage and in Eadred's will proves definitely that it was the Anglo-Saxon equivalent of the Latin *pincerna*. Kemble suggests that it may have been, adding, however, "but I am not aware of its occurrence". *Sax. in Eng.*, II, 111.

¹³See *Vocab.*, 128, for a list of Anglo-Saxon drinks.

¹⁴The importance of having a supply of beverages on hand is well expressed in *Beowulf* (769) where the terror of the Danes when they awoke to find the hero grappling with the monster is likened to the 'terror of ale-dearth' (*æalu-scerwen*).

¹⁵*Hist. York*, I, 449 (assassination of Edward): *Circumstantant eum undique armati viri, cum quibus et pincerna humili officio astabat ministrando*. This would indicate that not all cup-bearers enjoyed a high rank; at the same time we must not infer that the position of all was a humble one. The king was on a journey and this particular *pincerna* may not have been a regular butler.

attained the dignity among the Anglo-Saxons that it enjoyed across the Channel.

Grouped with the butler and the seneschal in Eadred's will, we find the *hrægel-weard*, or keeper of the wardrobe.¹⁶ This term is an unusual one for a high official, and, furthermore, we should expect some title that would suggest the chamberlain. Still, it seems that the keeper of the royal chambers also had charge of the wardrobe.¹⁷ The usual Old English word for chamberlain is 'bur-thegn,' though 'bed-thegn' is also used.¹⁸ In his homily on Esther Ælfric calls Ahasuerus' seven chamberlains his seven 'bur-thegns';¹⁹ but the two who conspired against the king's life are merely *bur-cnihtas*.²⁰ Ælfric evidently considered them of a lower order of servants. 'Bur-thegn' is again used in the homily on Judith.²¹ The servants performing the corresponding duties in the poem Judith are *ambyhtscealcas*.²² In the Latin sources the terms used are *camerarius* and *cubicularius*. There can be no doubt that all these terms—'bur-thegn,' 'bed-thegn,' 'rail-thegn,' *camerarius*, *cubicularius*, *custos cubile*—refer to the same official, the keeper of the king's chamber.²³ It is possible that the *camerarius* was subordinate to the *cubicularius*,²⁴ but I am in-

¹⁶In *Beowulf* there is a mention of a hall-thegn (*sele-begn*, 1794) who seems to have looked after the nightly comforts of the guests; but we are not told whether his duties also extended to the king's bed-chamber. In an anonymous document addressed to Edward the Elder, there is an allusion to a 'rail-thegn'. *K. O. D.*, No. 328: *ælfric was ða hræðen*. As he had been appointed by Alfred to assist in settling a dispute regarding certain lands, he may have belonged to his court. The Benedictine Rule provides for a *hrægelhus*, where the robes are kept in charge of a 'rail-thegn'. *Bibl. der ang. Prosa*, II, 55. A gloss from the tenth or eleventh century translates *vestiarius* with *hrægel-weard*, *Vocab.*, 279:19.

¹⁷Thus it was among the Merovingian Franks. See Walz, *D. V. G.*, II, 2, 72-73.

¹⁸That the bur-thegn had charge of the royal chamber appears from the use of the word *bur*. Though not always limited to chamber, this term usually contains the idea of privacy. *Wealhtheow's* apartments to which Hrothgar retired for the night, were 'bowers'. *Beow.*, 921. The tun where Cynewulf visited his mistress also had a bower. *A.-S. Chron.*, 755. If the chamberlain were in charge of the entire hall, he might be called a 'sele-thegn' or a 'heal-thegn'. Such a one seems to be mentioned in one of the charters: *Heal-begen Soearpa*. *K. O. D.*, No. 742. But it is more than likely that the term in this case has become a proper name.

¹⁹*Bibl. der ang. Prosa*, III, 93. Be Hester, 33-36.

²⁰*Ibid.*, II, 212-14, 278.

²¹*Ibid.*, III, 111, 118.

²²*Judith*, 37-38.

²³*Vocab.*, 198:6, *camerarius*, *burþen*; 216:21, *Cubicularius*, *custos cubili*, *bed-begn*; 124:17, 18, *Cubicularius*, *burþen*, *Camerarius*, *bed-begn*. These definitions are all from the tenth century.

²⁴Cf. Brunner, *D. R. G.*, II, 101: *Der merowingische Kämmerer heisst thesaurarius oder cubicularius.... Er hat Unterbeamten camerarii genannt. Im*

clined to consider the titles absolutely identical. It is true, however, that the latter is the term most commonly met with.²⁵ In 963 Edgar gave lands 'to his very faithful *camerarius* called by the noble name Winstan.'²⁶ In 972 there is another transfer of lands to Winstan now *cubicularius*.²⁷ If there had been any advance in his case, the office of *cubicularius* must have been the superior one.

It appears that there were several chamberlains serving the Anglo-Saxon king at the same time. Edgar's grants are to three different persons: Æthelsie, Titstan and Winstan.²⁸ Eadred's will also implies plurality: 'and to each legally appointed rath-thegn eighty mancuses of gold.'²⁹ According to William of Malmesbury, Edmund Ironside was slain by two of his *cubicularii*.³⁰ Three chamberlains are mentioned in Domesday as belonging to the Confessor's court: Aluric,³¹ Hugo,³² and Wenesi.³³ But what the usual number was, we do not know; nor can we affirm that there was a chief chamberlain before the reign of Edward the Confessor, during which period Hugelinus (Hugo) apparently held such a position, as will be shown presently.

The functions of the Anglo-Saxon bower-thegn were doubtless analogous to those of the Continental *camerarius*. He had charge of the king's private apartments including his bed and his wardrobe; he stood close to the royal person: audience had to be sought through him.³⁴ And, in addition to guarding the king's

karolingischen Sprachgebrauch ist umgekehrt der *camerarius* der oberste Schatzbeamte, während *cubicularii*, *sacellarii* und *dispensatores* seine Unterbeamten sind.

²⁵I find no reference to a *camerarius* in any apparently genuine document later than 963. In Domesday, however, *camerarius* is the title commonly used. Three of the Confessor's *camerarii* are mentioned in the survey. One of them is Hugo, evidently the Hugelinus of one of Edward's charters, in which he is spoken of as *cubicularius* and bur-thegn. *K. O. D.*, No. 904.

²⁶*Ibid.*, No. 503.

²⁷*Ibid.*, No. 572.

²⁸*Ibid.*, Nos. 489, 503, 572, 1247. The grant to Titstan is dated 962; Winstan and Æthelsie received lands in 963; Winstan received an additional grant in 972.

²⁹Birch, *Cartul.*, No. 912.

³⁰*Gesta Regum*, 217.

³¹*Domesday*, I, 151: Hoc manerium tenuit Aluric camerarius R. E.

³²*Ibid.*, 208:et ipsi vendiderunt Hugoni camerario Regis Edwardi.

³³*Ibid.*, 151: Hoc manerium tenuit Wenesi camerarius R. E.

³⁴William of Malmesbury. *Gesta Regum*, 274: [A blind man is healed by King Edward.] Postremo, ad regis curiam veniens, vestibulum camerae, adversantibus *cubiculariis*, frustra diu trivit; sed perstitit.... But the historian's narrative may have been colored somewhat by the customs of his own time.

camera, he seems to have had the keeping of his master's treasures.³⁵

Our earliest sources represent the king as possessing much hoarded wealth. The nature of this early hoard is revealed in the allusions to gifts that were given. These included everything necessary for military equipment or masculine adornment, especially swords, rings and horses.³⁶ But there were also articles of a more strictly commercial value used in payment, such as small rings and fragments of rings;³⁷ hence the common appellations ring-giver (*beah-gyfa*) and ring-distributor (*beaga-brytta*) that we find applied to the king in Old English verse.³⁸ But while the existence of a treasure can be shown to be an ancient fact, it is not so easy to find a treasurer. The old poets describe the king as acting in this capacity: he was the hoard-guardian. Nor can we always point to a localized treasury. King Eadred deposited his 'land charters and even old treasures from preceding kings' in various monasteries, especially in the one with which Dunstan was connected.³⁹ But it seems that at least as early as

³⁵On this point writers on English history are not wholly in agreement as the following citations show:

Lappenberg, *Hist. of Eng.*, II, 380: The chamberlain....was also the royal treasurer. The garments of the king were under the care of a keeper (*hrægl-thegn*).

Kemble, *Sax. in Eng.*, II, 106: The names by which the chamberlain was designated are *Hrægelþegn*....Cubicularius, Camerarius, *Bûrþgen*, perhaps sometimes *Dispensator*, and *Thesaurarius* or *Hordere*.

Green, *Conqu. of Eng.*, 523: In the time of Ælfred, the great officers of the court were....the *hordere*, the *staller*, the *dislthegn* and the *cupthegn*.

Freeman, *N. C.*, V, 291: The King's "Hoarder" was as old as the King's "hoard".... The Old English Kings had their *hoard*, and the hoard under its Hoarder must always have been a special department of administration.

Ramsay, *Found. of Eng.*, I, 524: But the Anglo-Saxon kings had a Treasurer, the *Hordere* or Keeper of the king's Hoard, who received the moneys due to him from the sheriffs and other reeves....

Lappenberg and Kemble hold with varying degrees of confidence that the chamberlain had charge of the treasury. Green follows Kemble. Freeman and Ramsay appear to consider the treasury a distinct department.

³⁶*Beow.*, 1046-48: Swa manlice, mære þeoden,
hordweard hælpa, heaþo-ræsas geald
mearam ond madmum.

³⁷Müller, *Vor Oldtid*, 539-40: [Describing archeological discoveries in Schleswig from the period of the migrations.] 'Among other things brought to light were nineteen bars and fragments of large rings and five small rings, all of gold and evidently intended for use as currency'. (Author's translation.)

³⁸It is interesting to note that the Old Norse *baugr*, A.-S. *beag*, a ring, is used in the earliest Norwegian laws as a unit in computing fines, *wergelds*, etc. See *Norges gamle Love*, V, 92. Cf. *Laws of Æthelbriht*, 6.

³⁹*Memorials of St. Dunstan*, 29:*quamplures scilicet rurales cartulas*,

the reign of Cnut, the royal hoard had been definitely located at Winchester. One of Harold Harefoot's first acts was to seize the royal valuables there in the queen's possession in that city.⁴⁰ The treasury remained at Winchester till the Conquest and was continued there by the Conqueror.⁴¹

The old word hoard seems to have persisted as a designation of a large accumulation of valuables,⁴² though toward the close of the Old English period we also find the word *haligdom* used.⁴³ It would seem natural that the person in charge of all this would be called a *hordere*, and certain writers on Anglo-Saxon subjects tell us that such was the case.⁴⁴ I have, however, yet to find the first bit of contemporaneous evidence for such a statement. The Laws of Æthelstan contain two significant passages relative to the hoarder: 'Concerning barter. And let no man dispose of cattle by barter except in the presence of the reeve, or the mass-priest, or the landlord, or the hoarder, or some other reliable man.'⁴⁵ And again concerning theft: 'Likewise, if it be that any one of the king's hoarders or of our reeves was in collusion with the thieves who had done the stealing, be it the same to him.'⁴⁶ The hoarders

etiam veteres praecedentium regum thesauros, necnon et diversas propriae adfectionis suae gazas sub munimine monasterii sui fideliter custodiendum.

Ramsay (*Found. of Eng.*, I, 304) infers from this that Dunstan was the king's treasurer. "He made Dunstan act as his treasurer, placing all his valuables, including the title-deeds of his private estates (rurales cartulas) under his charge at Glastonbury". But this is clearly incorrect as we are expressly told that Dunstan was only one of many with whom such documents were deposited. On page 31 of the *Memorials* we read:misit circumquaque ad congregandas facultates suas...per hoc enim vir Dei Dunstanus, velut alii regaliū gazarum custodes ibat; ut quas causa custodiendi secum habuerat regi reportaret.

⁴⁰*Flor. Wig.*, I, 190: Is [Harold]....misit Wintoniam suos constipatores celerrime, et gazarum opumque, quas rex Canutus Alfigivae reliquerat reginae, majorem melloremque partem ademit illi tyrannice....

⁴¹*Domesday*, III, 65:qui debebant geldum portare ad thesaurum regis Wintoniae....

⁴²A translation of II *Kings*, 20:13, reads as follows: "Then he took the envoys from abroad into his treasure-house and showed them his gold-hoard"—"gelewde his goldhord". See Cook, *Biblical Quotations*, 13:2.

⁴³Haligdom may, perhaps, mean the place where the treasures were kept; but the context usually indicates that the valuables themselves are meant.

⁴⁴See Green, Freeman, and Ramsay, cited above.

⁴⁵*Laws of Æthelstan*, II, 10: Be hwearfe. And nan man ne hwyrfe nanes yrles butan þæs gerefan gewitnesse, oððe þæs mæssepreostes, oððe þæs landhlafordes, oððe þæs horderes, oððe oðres ungelygenes mannes. Liebermann (*Gesetze*, I, 156) translates hordere with Schatzmeister. This is misleading, if not absolutely incorrect.

⁴⁶*Ibid.*, II, 8, 1:eac swilce cynges hordera oððe ure gerefena, swylc þara þeofa gewita wære, be staledon, beo he be þam ilcan. Liebermann's translation, Königskämmerer, is clearly incorrect.

alluded to in these laws were manifestly local officials merely. They are grouped with local functionaries, and, furthermore, it would be unreasonable to suppose that the higher dignitaries of the court could be expected to witness petty commercial transactions all over the country.

We get a clue to the real meaning of hoarder in the monastic literature of the time. In a tenth century vocabulary, *hordere* is given as the equivalent of *cellerarius* or keeper of provisions.⁴⁷ Ælfric uses the word similarly in his homilies: Saint Benedict, he tells us, ordered his hoarder to give a needy subdeacon a glass of oil,⁴⁸ "because they eat oil in that country with their food as we do butter."⁴⁹ The monastic hoarder is mentioned in the Chronicle along with the churchwarden and the rail-thegn.⁵⁰ The word can have but one translation: steward. The hoarder of the first law quoted was probably the landlord's steward, who might represent his master when cattle were to be exchanged. The official of the second law clearly had charge of a royal estate, as the context shows that he was in charge of serfs;⁵¹ he is also spoken of as 'our' hoarder. We are safe in concluding that there never was at any time in English history prior to 1066 a court-official whose duties were primarily fiscal and whose functions gave him a name. The *thesaurarius* came with the Normans.⁵²

As has already been suggested, however, it seems that Edward's chamberlain acted as his treasurer.⁵³ With the establishment of a fixed treasury came a new formula into the English chancery. Thus in one of Cnut's charters: 'And of these writings there are thrée, one at Christ Church, another at Saint Augustine's and the third in the king's treasury (or sanctuary).'⁵⁴ Similar terms are used in two other documents: *in thesaurum regis*;⁵⁵ *mid þise*

⁴⁷Vocab., 330:18.

⁴⁸Homilies, II, 178.

⁴⁹Thorpe's translation.

⁵⁰A.-S. Chron., 1131: circeweard and hordere and railþein.

⁵¹The guilty one shall lose his serfs. Schmid (*Gesetze*, 613) believes that this particular law refers to a "Schatzmeister, welcher aber, gleich dem Gerefa, als Verwalter der königlichen Güter erscheint....".

⁵²See *Domesday*, I, 49: Terra Henrici Thesaurarii.

⁵³The evidence that follows has, I believe, been neglected by writers on English history. They have, it appears, based their conclusions mainly on the etymology of the word *hordere* and on Frankish analogies. See Kemble, *Sac. & Eng.*, II, 106. For the Continental practice see Waits, *D. V. G.*, II, 2, 73; III, 502; Brunner, *D. R. G.*, II, 101; von Maurer, *Hofverfassung*, 192.

⁵⁴X. O. D., No. 1827: And þissara gewrita synd þreo,.... and ðe þridde is inne mid ðes kynges halldome.

kinges halidome.⁵⁶ There is therefore nothing strange in the statement made by the historian of Ramsey that the charters of that monastery which were received during the Confessor's reign were deposited in the royal treasury (*gazophylacium*) and kept by Hugelinus the chamberlain.⁵⁷ Four facts speak in favor of the correctness of this information: it was the practice in the first half of the eleventh century to deposit documents in the royal treasury;⁵⁸ in the reign of Henry II⁵⁹ such valuables would probably go to the royal exchequer and not to the king's camera, so that the chronicler could not have been influenced by the custom of his own time; we gather from an Old English vocabulary that the bower-thegn was the keeper of documents;⁶⁰ the name of the chamberlain is correct.⁶¹ While more evidence might be desired, whatever there is points toward the conclusion that, at least during the closing years of the Saxon monarchy, the chamberlain guarded the royal hoard.⁶²

The third great court-official was the seneschal or *disc-peg*n as he is called in Anglo-Saxon.⁶³ So far as I know, there is no

⁵⁶K. C. D., No. 932: Haec scripta tripliciter consignantur,....aliud in thesaurum regia.....

⁵⁷*Ibid.*, No. 931: Na sinden ðise write þre. on is mid ðise kinges hallgome.....

⁵⁸*Chronicon Ramesiacense*, 170-71:decrevit rex omnia, ordine quo gesta sunt vel relata, literis Anglicis ad monumentum futurorum declarari, ejusdemque scripti medietatem in gazophylacio, ubi quaecunque habebat praecipua et pretiosa erant reposita, ab Hugelino cubiculario suo diligenter conservari.

⁵⁹See charters cited above.

⁶⁰The chronicle was probably composed in that reign. See *Chronicon Ramesiacense*, Preface. XXII.

⁶¹*Vocab.*, 19:19: Cancellarius vel scriniarius, burþen. The scriniarius was the official of the scrinium, the depository of the king's valuable documents. See *De Cange*.

⁶²K. C. D., No. 904: Hugelino cubiculario.

⁶³Green classifies the duties of the chamberlain as follows: "Of all the officers of the court, he was far the most important, (1) as head of the whole royal service; (2) as exercising control over the royal palace or household, wherever it might be, and charged with care "de honestate palatii seu specialiter ornamento regali"; (3) as receiver of royal dues for the crown lands, and head of the royal gerefan.....; (4) as dispensator of the crown; and (5) through this and in his charge "de donis annis militum" as head of the household troops; and (6) of the budding diplomatic service." *Conqu. of Eng.*, 523-24. It is hardly necessary to say that for all this there is no authority in the English sources. It is merely an effort to apply Hincmar's system to the Saxon court.

⁶⁴The word stiuward seems also to have been used with much the same meaning. *Vocab.*, 223:7: Discoformis, discifer vel stiuward. But most probably this term was applied to the seneschals of lesser lords only. The king's steward in the tenth century, as Eadred's will shows us, was an official wholly different from the dish-thegn and of much less importance. In the Latin sources the

mention of such a functionary before the accession of Æthelstan.⁶⁴ A charter from the beginning of his reign (926) is witnessed by Wulfhelm *discifer regis*.⁶⁵ We next hear of the seneschal in connection with the death of King Edmund (946): Florence of Worcester reports that he fell while trying to shield his *dapifer* who had gotten into serious difficulties in trying to remove an uninvited guest from the banquet.⁶⁶ We find that Eadred in his will (before 955) bequeathes 'to each legally appointed dish-thegn' the same amount of gold as to each butler or chamberlain.⁶⁷ Four *disciferi* witnessed charters in the reign of Eadwig (955-59): Ælfheah,⁶⁸ two by the name of Ælfsige,⁶⁹ and Ealdred.⁷⁰ The last named signs a document dated 958. The next year Wulfgar *discifer* signs a charter given by King Edgar.⁷¹ This is the last mention of a king's seneschal before the time of the Confessor.⁷²

The master of the royal tables, like his colleague of the cellar, does not seem to have been a specially important personage at Edward's court. At any rate we hear little of him. The statement in the Book of the Hyde, that Edward made Harold his seneschal,⁷² must be discredited, as it has no support in contem-

seneschal is called *discifer*, *discoforus* and sometimes *dapifer*. *Vocab.*, 126:38: *Discifer uel discoforus, discpen.* (Ælfric, ca. 1000.)

⁶⁴We should expect to find such an official in Bede's account of King Oswald and his dining with Aidan the bishop; but we are told only that the viands were served on a silver dish. *H. E.*, III, 6. In *Ætodus* (181) there is an allusion to a 'meat-thegn' but he was not a royal official. The title occurs in a forged charter attributed to Offa (785). *K. O. D.*, No. 149; cf. Kemble, *Sas. in Eng.*, II, 109, where this document is apparently accepted as genuine.

⁶⁵*K. O. D.*, No. 1099. A document from the same year has the following peculiar close: "Ego Cyneferð episcopus subscripsi, et ceteri Duces, ministri, *disciferi*, testes". Birch, *Cartul.*, No. 858. This looks like the work of a forger, who has been unable to secure a list of dignitaries that he dared make use of.

⁶⁶*Fior. Wig.*, I, 134. No earlier source mentions a seneschal in this connection. William of Malmesbury calls the official in question a *dux*. The fact that he was the one who challenged the guest does, however, give some support to the opinion that he was the master of the feast. Ramsay accepts Florence's statement without question. *Found. of Eng.*, I, 297.

⁶⁷Birch, *Cartul.*, No. 912.

⁶⁸*K. O. D.*, Nos. 1191, 1196, 1197. The last two are copies of the same document. Ælfsige was a common name at that time.

⁶⁹*Ibid.*, No. 1214.

⁷⁰*Ibid.*, No. 1224.

⁷¹Florence alludes to a dispensator in Harthacnut's reign (I, 194), but while dispensator and dishthegn may have meant the same to him, they did not to the Anglo-Saxons generally. To Ælfric dispensator meant reeve. See *Genesis*, 43:16, 23; 43:19; 44:1. Cf. *Pastoral Care*, 63 (brytner). Kemble and Green identify the dispensator with the chamberlain. *Sas. in Eng.*, II, 106; *Conqu. of Eng.*, 523.

⁷²*Liber de Hyda*, 288, 290.

porary sources. Such an office might have been commensurate with such an ambition as Harold's at the time when the statement was written, but not at the time indicated. The charters give us little help. A document dated 1060 has the *signum Raulfi regis dapiferi* and the *signum Asgæri regis dapiferi*.⁷³ But as we shall find that Edward had two stallers bearing such names, I am inclined to consider this the work of a forger or of a later copyist who did not know what staller meant.⁷⁴ A charter of two years later has the signatures of *Adzurus regis dapifer* and *Yfingus regis dapifer*.⁷⁵ It is possible that we again have the names of stallers, that Adzurus is Asgarus and Yfing, [L]ifing. It will not do to assume, however, that staller and *dapifer* are equivalent terms: historically the two offices are wholly distinct, and they also seem to differ in functions and in relative importance.⁷⁶ It is in Domesday that we find the most reliable references to Edward's stewards, and these are by no means satisfactory. Ednod *dapifer* held five manors in Edward's day,⁷⁷ and of nine hides belonging to that king in Huntingdon Alanus his *dapifer* held two.⁷⁸

In addition to the seneschals who served the king directly, there were other officials with similar duties serving the various members of the royal family. Among those present at Wynflæd's suit (in Æthelred's reign) was 'Æfic the dish-thegn of the ethelings.'⁷⁹ Some time in the same reign Æthelstan Etheling willed eight hides to 'Ælmere his seneschal.'⁸⁰ About the year 1006 the etheling Edmund purchased certain lands, his dish-thegn Leofwine witnessing the transfer.⁸¹

On the duties of the dish-thegn the sources are not very explicit. "His especial business was to superintend all that apper-

⁷³K. O. D., No. 808.

⁷⁴The difficulties that the Normans experienced in their efforts to comprehend Saxon terms is well illustrated in a passage from Michel's *Chroniques Anglo-Normandes*, 234 (quoted by Ellis in introduction to *Domesday*, XXIX, note): *Esagarius regie procurator aule, qui Anglice dicitur stallere*, i. e., regni vexillifer.

⁷⁵K. O. D., No. 815.

⁷⁶See Chapter VII for a discussion of the stallership.

⁷⁷I, 69: *Haec V maneria tenuit Ednod dapifer T. R. E.* He seems also to have been staller. See *Eng. Hist. Rev.*, XIX, 92.

⁷⁸I, 206b: *De eadem terra habuit Alanus dapifer ejus II hidas.*

⁷⁹K. O. D., No. 698: *æfic para æþelunga discten...*

⁸⁰*Ibid.*, No. 722: *...Ælmere minen discōene...*

⁸¹*Ibid.*, No. 1302: *...Leofwine æþelinges discten...*

tained to the service of the royal table, under which we must probably include the arrangements for the general support of the household, both at the ordinary and temporary residences of the king."⁸² With this general statement the subject will have to be dismissed.⁸³

Of the fourth great official of the Germanic courts, the master of the horse, I shall have something to say in a subsequent chapter. We have no reason to think that he was an important official at the English court before the Danish dynasty. In the tenth century, the glorious period of Anglo-Saxon kingship, the inner circle of the royal household service counted but three dignitaries: the butler, the chamberlain and the seneschal.⁸⁴

⁸²Kemble, *Sas. in Eng.*, II, 109.

⁸³On this matter Continental analogies throw but little light. See Waits, *D. V. G.*, III, 499; VI, 329; Brunner, *D. R. G.*, II, 101.

⁸⁴Since the above was written J. H. Round has published a paper on "The Household of Edward the Confessor" in *Eng. Hist. Rev.*, XIX, 90-92. In this he appears to include the marshal, the constable and the treasurer among the high officials of that king. I have elsewhere in this chapter given my reasons for identifying the treasurer with the chamberlain; the Henricus Thesaurarius that Round refers to evidently held the office of treasurer at the time when the survey was made (see *Domesday*, I, 49); but there is no evidence that he served Edward in that capacity. He was one of the tenants-in-chief in William's day. There is a reference to a constabularius who held such an office in Edward's day (*Ibid.*, I, 151); but elsewhere the same person is spoken of as staller (*Ibid.*, I, 146b, 148b, 218b). I conclude, therefore, that Edward had no constable at his court. It is, of course, possible that the duties of such an official may have been exercised by the staller. Edward evidently had a marshal, but he does not seem to have been classed with the more important officials.

CHAPTER VI.

THE KING'S PRIEST. THE CHANCERY.

The royal household in the middle ages had its ecclesiastical as well as its secular side.⁸⁵ The king's priest did not rank with the high officials of the palace in dignity, yet, his influence in affairs of state was far-reaching and profound. It is true, the importance of the chaplainship would depend largely on the character of the chaplain. When Wilfrid was growing into maturity, the Northumbrian king, wishing to make him his 'inseparable companion,' asked that he be ordained to the priesthood.⁸⁶ It is readily seen that with such an aggressive, almost gigantic spirit as the king's religious guide, the policies of government would to a large extent be determined in the royal chapel. However, the bishop decided that Wilfrid was better fitted for episcopal duties, and he never became royal chaplain.

The first priest connected with an English court of whom we hear anything was the one who accompanied the princess Bertha when she left Gaul to become queen of Kent.⁸⁷ But this man of God, Liudhard by name, does not seem to have made his presence felt among the Kentish people to any appreciable extent. Of a different type was Paulinus, the spiritual adviser of Edwin's queen, through whose persistent efforts the conversion of Northumbria was begun.⁸⁸ Bede mentions several other royal chaplains serving at Northumbrian courts,⁸⁹ but after his time we hear little of

⁸⁵The subject of the royal chapel is discussed by Kemble in *Sax. in Eng.*, II, 113-17; also by Green in *Conqu. of Eng.*, 524-28. Green's discussion contains a great deal of information, but his use of sources has been uncritical and his conclusions are often incorrect.

⁸⁶*Hist. York*, I, 13.

⁸⁷Bede, *H. N.*, I, 25.

⁸⁸*Ibid.*, II, 9. *Hist. York*, I, 353.

⁸⁹About the middle of the seventh century a priest Utta, "multae gravitatis ac veritatis vir," brought Eanfled from Kent to become queen of Northumbria. Bede, *H. N.*, III, 15. He may have been a royal chaplain. Eanfled brought her own confessor with her, a Kentish priest named Romanus. *Ibid.*, III, 25. In 660 the Northumbrian king had a confessor whose name was Caelin. *Ibid.*, III, 23. In 665 one Eadhed was chaplain at the same court. *Ibid.*, III, 28.

the king's priest before the reign of Alfred.⁹⁰ Asser speaks of the chaplains—*capellanos suos*⁹¹—serving at Alfred's court, and names two, "Ethelstan and Werewulf... Mercians by birth and erudite."⁹² The king himself names two more, Grimbald and John.⁹³ But he speaks of these as his teachers rather than as his confessors. Ecclesiastics were numerous at Alfred's court, but the king called them not so much because they were holy men as because they were learned.⁹⁴

During the reign of Alfred's successor, the king's presbyter seems to have been especially honored: he was admitted to the circle of the wise. At least we shall have to suppose that the presbyters who witnessed Edward's charters were, some of them if not all, the king's own priests. The documents bearing such signatures are comparatively numerous in this reign.⁹⁵ When

⁹⁰According to Alfred's laws (88, 2) fighting in the presences of the king's priest was punished by a heavy fine. But the fact that the priest in this case is coupled with the ealdorman's deputy leads me to think that the law does not refer to the court chaplain, but to the parish priest acting in an official capacity at the folk-moot.

⁹¹Petrie's *Monumenta*, 496.

⁹²Asser (Giles' translation): *Six Old Eng. Chron.*, 70.

⁹³In the Preface to Gregory's *Pastoral Care*. On the subject of Alfred's chaplains see Plummer, *Alfred*, I, 136 ff.

⁹⁴Preface to *Pastoral Care*: 'Even as I learned from Plegmund my archbishop, and from Asser my bishop, and from John my mass-priest.' It is not probable that all these were continuously at the royal court; but some time or other they had been in the king's personal service. It will be remembered that Asser was asked to divide his time, giving certain months to the king. Plummer thinks that Alfred "established, probably after the example of Charles the Great, a Court school, for the education specially of the sons of the upper classes, in which books of both languages, Latin and Saxon, were read." See *Alfred*, 135.

⁹⁵List of presbyters whose signatures occur in Edward's charters:

Year	900.	903.	903.	904.	904.	904.	901-9.	901-9.	909.	909.	909.	909 (?)	910 (?)	910 (?)	910 (?)	909.
Tata	+			+	+	+	+	+								
Werulf	+	+							+	+						
Beornstan	+		+	+	+	+	+	+	+	+	+	+	+	+	+	+
Ethelstan	+			+	+	+										
Walda	+			+	+	+										
Johan				+	+	+										
Searu				+	+	+										
Thoenulf				+	+	+										
Thald				+	+	+										
Brichtulf							+									
Elfstan								+								
Ealhstan									+	+	+	+	+	+	+	+
Wulfrie																
Ethelbyrht																
Yfelbeard																
No. in K. C. D. .	1077	1080	335	337	1084	1085	1087	1088	1090	1091	1092	1093	1094	1095	1096	
No. in Birch, Cartul																620

This does not include K. C. D., Nos. 381 and 342, which are apparently spurious. Kemble questions them. Nos. 597 and 598 in Birch are also excluded for the reason.

we consider the number of bishops and *duces* who were also present as witnesses, it seems clear that most of these charters must have been issued when the national council was in session. The normal number of presbyterial signatures is four, though the earlier documents frequently have more. The names of Werulf,⁸⁶ Beornstan and Æthelstan are found with great regularity as the appended table shows. The same is true of Tata and Ealhstan; the latter apparently succeeded the former, as the last document bearing Tata's name is the first in which Ealhstan's signature occurs.⁸⁷

After the death of Edward the power of the presbyter seems to have declined. Æthelstan thoroughly reorganized the *witan*,⁸⁸ and the priest disappeared.⁸⁹ In the succeeding reigns up to the accession of Cnut, the sources have little to say about the king's chaplains except as partakers of the royal bounty.¹ Cnut seems to have revived the custom of calling in his priests to witness land transfers. There are, however, only eight documents given during his reign that have presbyterial signatures, the earliest dating from 1024.² Six of these bear Eadwold's name; four have Stigand's signature; Ælfwine has signed three; eight other priests have witnessed one document each. In the charters of Edward the Confessor such signatures are met with quite frequently.³

The position of confessor at the royal court was no doubt both an honorable and a profitable one. In Eadred's will the king's

⁸⁶K. C. D., No. 1094, has Werulf dux which may be a scribal error for Werulf presbyter.

⁸⁷The list of presbyters would be materially reduced if we omit No. 1088 in Kemble. This charter relates wholly to ecclesiastical affairs, and the priests whose names appear in this document only may have belonged to the episcopal and not to the royal household.

⁸⁸See Stubbs, *O. H.*, I, 140.

⁸⁹Two charters of 931 have the signatures of "Godesscealc sacerdos minister". K. C. D., Nos. 1104, 1106. But it is not clear that this priest was a royal chaplain. Cf. No. 1185, where there is an allusion to "Godescallus abbas abbundunlae". The charter is an evident forgery, but the scribe may have been correctly informed as to the name of the abbot at this period.

¹Birch, *Cartul.*, No. 803. Edmund, 945. A grant to "culdum presbytero meo, cui nomen Æthelnodus". K. C. D., No. 1165, Eadred, 948. Signed among others by Heremod presbyter who apparently was a court priest. Birch, *Cartul.*, No. 1288. Æthelflæd second queen of Edmund wills two hides to each of her two priests, Alfwold and Æthelmær. K. C. D., No. 1200. Eadwig (956) endows his "fideli Byrthelmo presbytero" with lands at Cenigton. Soon afterwards the grantee disposes of these lands and in this transaction he appears as bishop. *Ibid.*, no. 1201.

²K. C. D., Nos. 741, 743, 745, 746, 751, 1318, 1322, 1324.

³See *Ibid.*, Nos. 767, 791, 792, 793, 796, 800, 813.

chaplains rank next to the great palatine officials, the seneschal, the butler and the chamberlain: 'and to each of my mass-priests that I have appointed to attend on my relics, fifty mancuses of gold and five pounds in pennies, and to every one of the other priests, five pounds.'⁴ We shall have to conclude from this that the number of ecclesiastics at court must have been comparatively large.⁵ It seems likely that each of the principal members of the royal family had his own confessor or chaplain.⁶ Some of them must have had several.⁷ I have been able to find the names of more than twenty persons who were royal presbyters in the days of Edward the Confessor.⁸ The greater number of these appear in sources that cannot be questioned, such as the Chronicle and Domesday.

The chaplain's reward was land,⁹ or an abbacy, or a bishopric, as soon as a vacancy should appear. I have already suggested that the king's confessor, if a man of strength and spirit, would be a powerful factor in shaping governmental policies, and might thus give the church undue influence in the state. But the institution was two-edged; more often it helped the king to maintain his position as lord of the Anglican church. The chaplain might become strongly attached to his lord and thoroughly subservient to the king. His chaplainship might also become a stepping-stone to higher honors. In the Northumbrian kingdom episcopal appointments seem generally to have come after service in the king's chapel.¹⁰ There is, however, little evidence that the Eng-

⁴Birch, *Cartul.*, No. 912. (The translation is from *Liber de Hyda*, 349.)

⁵Chaplains were also numerous at the Carolingian court. See Walz, *D. V. G.*, III, 525.

⁶Cf., *ibid.*, III, 525: Die Gemahlin des Königs oder Kaisers hatte einen eignen Capellan.

Attention has already been called to the queen's chaplains mentioned by Bede and to the priests endowed by queen Æthelred in her will. Æthelstan Etheling also remembered his mass-priest in his will. *K. C. D.*, No. 722. The queen's priest Walter was given a bishopric in 1060. *Flor. Wig.*, I, 218.

⁷See Birch, *Cartul.*, 1288. Æthelred's will.

⁸Cf. Green, *Conqu. of Eng.*, 526-27.

⁹The royal grants to presbyters in the ninth century have been referred to. *Domesday* mentions several of Edward's priests as landholders. "Wimarus presbyter regis" held two small areas in Buckingham and Bedford. I, 161, 210b. "Eamell capellanus regis Edwardi" had a little plot of ground in Kent. I, 1b. Edward is also said to have given certain lands in Huntingdon to "Vitali et Bernardo presbyteris suis". I, 208.

¹⁰Caelin did not get such a position for himself, but he may have been influential in securing it for his brother. Bede, *H. E.*, III, 28. Eadhed, after serving some time as royal capellanus, became bishop of Lindsey. *Flor. Wig.*, I, 248.

lish kings tried to control the church through the episcopal patronage before the Danish period.¹¹ Three of Cnut's chaplains are known to have been rewarded with bishoprics: Ælfwine in 1032,¹² Duduc the next year¹³ and Eadsie in 1038.¹⁴ Stigand, another of Cnut's presbyters, received similar honors in Edward's reign. Cnut's policy in church appointments was continued and further developed by Edward the Confessor. Apparently the king had but little worldly goods to spare for his friends,¹⁵ but with offices he was more liberal. Giso,¹⁶ Heca,¹⁷ Hereman,¹⁸ Stigand,¹⁹ Ulf,²⁰ and William,²¹ all of the king's own chapel, were given episcopal sees in this reign. Kynsige whom Edward made archbishop of York was probably one of Cnut's chaplains.²² Walter, the queen's priest, was also rewarded with a bishopric.²³ Leofric, chancellor and doubtless king's presbyter, was placed in charge of two western sees.²⁴ Godric, the son of one of the royal chaplains, received an abbacy.²⁵ Regenbaldus was elevated to the chancellorship.²⁶ It is not strange that this persistent policy of

¹¹ Examples are Alfred's appointment of Plegmund to the see of Canterbury (Plummer, *Alfred*, 139), and the advancement of Byrhtelm in 956. See *K. O. D.*, Nos. 1200, 1201.

¹² *A. S. Chron.*, 1032: [Vacancy in the see of Winchester.] And Ælfwine þæs cynges preost feng þerto.

¹³ Stubbs, *Reg. Sac. Angl.*, 19. Cf. *K. O. D.*, No. 1318.

¹⁴ *Flor. Wig.*, I, 193: ..regis capellanus Eadsius in archiepiscopatum successit. But he seems to have received episcopal honors in 1035. See Stubbs, *Reg. Sac. Angl.*, 19.

¹⁵ On the landed estates held by Edward's priests see the references to *Domesday* cited above.

¹⁶ *K. O. D.*, No. 835: [Wells, 1061.] Sciatis nos dedisse Gisoni presbytero nostro episcopatum hunc apud vos.

¹⁷ *A.-S. Chron.*, 1046; also 1045, 1047, 1048: [Sussex, 1047.] Heca cinges preost feng þarto.

¹⁸ *Ibid.*, 1043: [Ramsbury.] Hereman þæs cynges preost feng to þam biacoprice.

¹⁹ *Ibid.*, 1042: [East Anglia, 1043.] Stigand preost was gebletsod to biacope to Eastanglum. Cf. *K. O. D.*, Nos. 751, 1318, 1322, 1324.

²⁰ *Ibid.*, 1049: [Dorchester, 1050.] Eadwerd cing geaf Ulfæ his preoste þæt biacoprice.

²¹ *Ibid.*, 1048: [London, 1050.] ...and was Willelm þæs cynges preost gehædod þarto.

²² *Ibid.*, 1053. Stubbs (*Reg. Sac. Angl.*, 20) gives the year as 1051. Kynsige signed one of Cnut's charters as presbyter in 1026, *K. O. D.*, No. 748.

²³ *Flor. Wig.*, I, 218: (1060.) Et Herefordensis praesulatus...capellano Edgithae reginae Waltero Lotharingo est datus.

²⁴ *Ibid.*, 199: [Exeter and Crediton.]...regis cancellario Leofrico...datus est praesulatus.

²⁵ *Ibid.*, 211: [Winchcombe, 1053.] Godricum, regis capellani Godmanni filium abbatem constitueret.

²⁶ Regenbaldus will be discussed later in this chapter. The corrections and additions in brackets are mainly from Stubbs. *Reg. Sac. Angl.*, 19-21.

selecting the spiritual lords of the realm from the king's own immediate household should have produced dissatisfaction and even opposition.²⁷ The practice, however, did not originate in England; it is at least as old as the Carolingian monarchy. Charlemagne not only exercised complete control over episcopal appointments,²⁸ but also selected the prospective candidates and had them trained at his own court.

The royal chapel at the Frankish court was directly in charge of a chief presbyter to whom all the other chaplains were subordinate. He was usually known as the *summus capellanus* or *archicapellanus*,²⁹ and his office carried with it great influence in ecclesiastical affairs not only at the local court but in the empire at large. It seems likely that such a dignitary existed at the Anglo-Saxon court also; but on this point our sources maintain an absolute silence.

In addition to their priestly functions³⁰ the clerks of the royal chapel may have had certain notarial duties.³¹ Documents were regularly issued on the king's authority, and it is difficult to see who but some ecclesiastic could have produced them; for the knowledge and skill necessary in drawing up such documents in those days were not inconsiderable.³² As a rule, the early English charters do not state by whom they were written; there are a few exceptions, but many of these are spurious or at least doubtful.³³ An examination of these will reveal the fact that nearly all, the doubtful and the probably genuine,³⁴ claim to have been drawn up

²⁷ See Kemble, *Sax. in Eng.*, II, 115.

²⁸ Waltz, *D. V. G.*, III, 420.

²⁹ *Ibid.*, 517 ff.

³⁰ For the duties of the chaplains at the Carolingian court, see *ibid.*, 522.

³¹ Cf. *ibid.*, 523 ff.; Brunner, *D. R. G.*, II, 114.

³² For the state of learning in early England, see Plummer, *Alfred*, 81-82.

³³ In two of Ine's charters (*K. O. D.*, Nos. 45, 48) dated respectively 699 and 701, Winberht is represented as being the scribe. The first of these is clearly a forgery; the second, a wholly different document, may be genuine. More than doubtful are two documents dated 605 (*ibid.*, Nos. 3, 4) and approved by "Angemundus referendarius." The referendarius was a Merovingian official; his title seems never to have been born by any English functionary. A charter dated 682 (Birch, *Cartul.*, No. 62) contains this statement: "Ego Aldhelm hanc scedulam scripsi et subscripsi." He may have been the Aldhelm who was abbot of Malmesbury six years later. See *ibid.*, No. 71. A rather suspicious charter from 798 was ostensibly drawn up by Tilhere the king's priest. *Ibid.*, No. 268. See also *K. O. D.*, No. 555 (a very questionable document): Ego Aldred abbas . . . hanc libertatis singrapham scripsi.

³⁴ *K. O. D.*, No. 1191 (Nos. 1196 and 1197 are copies of this): Ego Daniel, iubente rege, hanc syngrapham dictavi. Daniel was bishop of Rochester at this

by some ecclesiastic; also that the scribe usually did not reside at court.³⁵ The series of such documents extends well past the middle of the tenth century.³⁶

This leads directly to the question, was there a royal chancery in Anglo-Saxon times? The evidence just presented, though by no means conclusive, declares against the existence of such an institution at least before the reign of Æthelred. It is true, these charters may be exceptional; but in that case the existence of a chancery would be a matter of common knowledge. In a Supplement to Ælfric's Vocabulary, which cannot be earlier than Æthelred's reign, we find *cancellarius* defined as *scriniarius* or 'burthegn'.³⁷ It is certainly possible that the keeper of the king's strongbox might also act as royal notary; but the probabilities are that the glossarist was trying to explain a term that he did not clearly understand.

Earlier students of Anglo-Saxon history looked on the English chancery as a most ancient institution. Lappenberg traced it back to the reign of Æthelbirht of Kent.³⁸ Spelman found it in the days of Edward the Elder.³⁹ "From Edgar," according to Palgrave, "the office may be traced more distinctly."⁴⁰ But recent writers agree with Kemble that not "till the reign of Eadweard the Confessor is there the slightest historical evidence in favor of

time, 956. See Stubbs, *Reg. Sac. Anglo.*, 15. *K. O. D.*, 1166: Ego Dunstanus abbas indignus cartulam, inde Imperante domino meo rege Eadredo, composui, et propriis digitis meis perscripsi. Dunstan was abbot of Glastonbury. The charter is brief and business-like, in every way worthy of the great prelate. (949.) *Ibid.*, No. 534: Ego Wulfse episcopus hanc chartulam...perscribere iussit. (967.)

³⁵ A document from the middle of the eighth century closes with this sentence: 'Alda, the king's gefera, he wrote it.' *K. O. D.*, No. 95. It is possible that *gefefa* was intended instead of *gefera*; the latter, however, is a good Saxon word meaning companion. Alda may have been a man of learning occupying a position at court like that of Asser in Alfred's time.

³⁶ An apparently genuine charter from 1065 seems to have been composed by "Brihticus abbas". *K. O. D.*, No. 817.

³⁷ *Vocab.*, 190:19.

³⁸ *Hist. of Eng.*, II, 381: "As early as in charters of Æthelbirht of Kent we meet with a Referendarius, probably the same dignity as that bearing from the time of Eadward the Elder the name of Chancellor." Cf. Kemble, *Sax. in Eng.*, II, 114, note. In *K. O. D.*, Nos. 3, 4, an *Angemundus referendarius* is mentioned, but these two charters are glaring forgeries.

³⁹ Palgrave, *English Commonwealth*, II, 345.

⁴⁰ *Ibid.* The author was evidently deceived by the many forgeries purporting to emanate from Edgar's councils and of which No. 555 in the *Code* may serve as an example: "Lam decreuimus roborare et de sigillo nostro iussimus sigillare."

such an office."⁴¹ That a chancery existed just before the Conquest cannot be doubted. Much of the evidence for such an institution in Edward's day is, indeed, questionable; but we shall not be able to reject all. Florence of Worcester tells us of a Leofric chancellor who was given episcopal honors in 1046.⁴² There is a grant of lands to Harold dated 1062 which is witnessed by *Regenbaldus regis cancellarius*.⁴³ Several evident forgeries also bear the signatures of this same priest or chancellor. His name and title also occur in a document drawn up in the Saxon idiom and apparently above suspicion, a donation to the Old Minster at Winchester, witnessed by 'Edith the lady, Stigand the archbishop, Harold earl and Rengebold chancellor.'⁴⁴ "He occurs repeatedly in Domesday, where he is distinguished as 'Canceler,' 'Presbyter' and 'de Cirencestre.'"⁴⁵ He seems to have been one of the few officials of Edward's court who were taken into the service of the Conqueror.⁴⁶

The chancellor was the chief scribe of the royal court. All the king's secretarial forces were subject to his orders. His principal duty was to prepare the royal documents or to have them properly drawn up by his notaries.⁴⁷ He was also the customary keeper of the royal seal,⁴⁸ and so closely is this symbol associated with the chancellor's office that when we find the one we should expect to find the other. There is little evidence for the use of a seal before the Confessor's time.⁴⁹ The historian of Ramsey, writing in the twelfth century, tells us that none of the charters belonging

⁴¹*Sax. in Eng.*, II, 114. See also Stubbs, *C. H.*, I, 381; Green, *Conqu. of Eng.*, 526.

⁴²*Flor. Wig.*, I, 199. I see no reason for doubting the statement. It is true, the author wrote after the Conquest and his authority is unsupported, but Florence seems to have had exceptional advantages for getting information relative to his own time and region. Leofric was given sees not far from Worcester.

⁴³*K. O. D.*, No. 813.

⁴⁴*Ibid.*, No. 891: Rengebold canceler. Cf. *Eng. Hist. Rev.*, XI, 782, note.

⁴⁵Round, *Feudal England*, 421.

⁴⁶In one of his charters (quoted by Round in *Feudal England*, 422) William speaks of Regenbald as his priest, "minan preoste."

⁴⁷Cf. Waits, *D. V. G.*, III, 513-515; Freeman, *N. O.*, V, 290.

⁴⁸Cf. Stubbs, *C. H.*, I, 381.

⁴⁹Offa's seal, found attached to a document in a French monastery, may be left out of account as the charter cannot be genuine. For the document see Birch, *Cartul.*, No. 259. Cf. Stevenson's discussion in *Eng. Hist. Rev.*, VI, 786-42: The Old English Charters to St. Denis. The words *sigillabant* and *sigillare* occur occasionally in the charters, but I do not believe they will be found in any genuine document.

to that establishment and dating from Edgar's day had seals.⁵⁰ He also tells us that the charters from Edward's reign were provided with such authentications.⁵¹ The Confessor's seal is, furthermore, mentioned in the most reliable sources of the period, the Chronicle⁵² and Domesday.⁵³ But it is probably not true, as certain writers assert, that Edward was the first English king who had a seal.⁵⁴ In a document entitled Wynflæd's Suit, apparently an account of a shire-moot held some time in Æthelred's reign, this sentence occurs: 'Then sent the king his seal by Ælfhere the abbot to the gemot at Cwiclemeshlæwe.'⁵⁵ If this document is genuine, and it seems to be, we shall have to say that the royal seal was used in England at least as early as the tenth century.

The evidence before us seems to show that there was a chancery during Edward's reign; that his two chancellors were churchmen; that the office of chancellor, at least while Regenbald held it, was one of great power and profit.⁵⁶ There seems to have been a royal seal and hence, perhaps, a chancery in Æthelred's day;⁵⁷ but for the earlier period all the evidence is negative. It should be said, however, that the final word on this subject cannot be spoken before a thorough study of originals has been made and the documents issued in each particular reign carefully examined and compared.⁵⁸

⁵⁰*Historia Ramesiensis*, 65: Notandum vero quod nullis eadem scedulae sigillorum impressionibus sunt munitae....

⁵¹*Ibid.*, 161, 167.

⁵²1048: Ða com Sparhafoc abbod to him mid þæs cynges gewrite and insegle.

⁵³1, 78b: ...in ipsa ecclesia inventus est brevis cum sigillo R. E. See also pp. 208, 374 et passim. Much of the Domesday evidence on this point has been collected by Freeman. *N. O.*, V, 526, note. A few of the impressions of the Confessor's seal seem to have been preserved; Birch describes three of them. See *Catalog of Seals in the Department of MSS. in the British Museum*, I, 2-3.

⁵⁴Stubbs, *O. H.*, I, 381: "Edward the Confessor, the first of our sovereigns who had a seal, is also the first who had a chancellor." For a similar view see Green, *Conqu. of Eng.*, 526.

⁵⁵*E. O. D.*, No. 693: Ða sende se cyning be æluere abbude his insegel to þam gemote at cwiclemes-hlæwe....

⁵⁶Regenbald held land in five counties and controlled the revenues of sixteen churches. See Round, *Feudal England*, 426.

⁵⁷The introduction of the chancery into England will be discussed in the concluding chapter of this study.

⁵⁸The subject will doubtless be exhaustively treated in Stevenson's forthcoming work, *The Anglo-Saxon Chancery*. Stevenson's view of the general question is presented briefly in *Eng. Hist. Rev.*, XI, 731-44. See also Round, *Feudal England*, 421-30: Regenbald.

CHAPTER VII.

THE INNOVATIONS OF CNUT AND THE DANES.

That the Danish conquest of England should have produced certain changes in the institutional life of the conquered nation seems inevitable. The new king was a Dane; his councillors and trusted men were aliens like himself. His court seems to have been largely Scandinavian not only in personnel (as appears from the signatures to Cnut's charters) but in speech and spirit. The praise-lays that the Danish conqueror heard at his regal banquets were not such as would delight a Saxon ear.⁵⁹ The influence of an alien court on the constitutional development of a people is a matter of great importance.⁶⁰ With the general question of Scandinavian influence the present study is not concerned. This chapter will be limited to the consideration of two institutions that appeared in England with the Danish dynasty: the stallership and the royal guard or corps of house-carles.

With regard to the staller the view commonly held is that this office was equivalent to that of the earlier horse-thegn⁶¹ and that it may have been borrowed from the Frankish court,⁶² as the

⁵⁹See *O. P. B.*, II, 155-56. Only a few fragments of the poetry sung in praise of Cnut have come down to us.

⁶⁰As a rule writers on English history conclude with Green (*History of the English People*, I, 100) and Stubbs (*O. H.*, I, 219-20) that the influence of the Northmen in the shaping of Anglo-Saxon institutions is a negligible quantity, as the invaders, having essentially the same speech and customs as their brethren in Britain, could have but little to contribute. On the other hand, Steenstrup, the Danish historian of the viking age, finds the legal and political systems of Old England permeated with Norse terms and institutions. While few would accept all of Steenstrup's conclusions, no one who has examined his work will deny, that he has shown, that the earlier English opinions on this subject are untenable and that for an adequate understanding of the institutions of England in the eleventh century a considerable attention must be given to Norse sources. See *Normannerne*, especially Vol. IV, *Danelag*.

⁶¹See chapter VIII.

⁶²Lapenberg, *Hist. of Eng.*, II, 381: In the instance of the Marshal even the usual Anglo-Saxon denomination of stallere (comes stabuli) indicates its

Anglo-Saxon title staller (supposedly derived from Latin *stabularius* or *comes stabuli*⁶³) seems to indicate. Till recently it was thought that the Norse *stallari* was this same Old English official introduced into Norway, perhaps some time in the tenth century.⁶⁴ It is my purpose to show that the converse is more probably true: that the stallership is Norse in name and origin, and that it came into England with the Danish host.⁶⁵

The earliest appearance of the Norse staller is in the sagas dealing with the times of Olaf Trygvesson about the year 1000.⁶⁶ He appears in the reign of Saint Olaf as a most important state official;⁶⁷ there can be no doubt that Björn, the staller of that reign, is an historic person. But even if we reject the accounts in the sagas of the two great Olafs, we still have in the court-poetry of the time sufficient evidence for the existence of such an official among the Northmen in the early part of the eleventh century. Sighvat the Poet, the roving scald who sang the exploits of Cnut 'the Mighty' at the English court, alludes to the Norwegian staller in his poems.⁶⁸ In the English sources this official appears for the first time in one of Cnut's charters;⁶⁹ the document is undated but was probably given in the year 1032.⁷⁰ During the Confessor's reign the title occurs frequently, but nearly always in legal documents only.⁷¹

If the staller's office is of Norse origin, the institution must be studied in the light of the Norse sources rather than of the Frankish. It may be urged, however, that, even if it did come into England with the Danes, the etymology of the term shows an unmistakably Frankish-Roman origin. But it does not seem necessary to derive *stallari* from *stabulator* or any other Latin

Roman origin; for he is seldom designated 'cyninges hors-thegn.' Cf. Kemble, *Sax. in Eng.*, II, 108; Green, *Conqu. of Eng.*, 523.

⁶³Stubbs, *O. H.*, I, 383, note: The name is derived from the *comes stabuli* of the Byzantine court.

⁶⁴See *S. R. D.*, III, 156; Keyser, *Efterladte Skrifter*, II, 81, note.

⁶⁵Cf. Steenstrup, *Danelag*, 125, where the subject of origin is briefly treated. Steenstrup was the first to suggest that the Norse term *stallari* is probably older than the Anglo-Saxon *stallere*.

⁶⁶See *Fornmannasaga*, II, 381. Cf. Keyser, *Efterladte Skrifter*, II, 80.

⁶⁷Snorre, *St. Olaf's Saga*, 55.

⁶⁸*O. P. B.*, II, 129, 134.

⁶⁹*K. O. D.*, No. 1327: *pored steallare*. The name is Danish.

⁷⁰It bears the signatures of bishops Ælfsige and Ælgelric (Æthelric). The former died in 1032, the same year in which the latter received his appointment. See Stubbs, *Reg. Sac. Anglic.*, 18, 19.

⁷¹It occurs once in the *Chronicle* (1047): *man utlagode Osgod stallere*.

term of like import; it seems much more natural to connect it with *stallr*, an Old Norse word meaning much the same as modern English *stall*.⁷² This word has a Germanic origin and is only a distant relative of the Latin *stabulum*.⁷³

The stallership was of great importance in the North during the eleventh and twelfth centuries. Langebek believes there was such an official in Denmark as early as Cnut's reign;⁷⁴ the probabilities favor this view; still, no historic example can be produced before 1085.⁷⁵ Several are known to have borne the title in the next century; but after 1200 the dignity declined and was overshadowed by that of the marshal.⁷⁶ The position of the staller in Saint Olaf's household may best be illustrated with a citation from Snorre's history: 'King Olaf located his court at Nidaros [Thronthjem]. There was built a large kings-hall with doors in both gables. The king's high-seat was in the middle of the room;⁷⁷ on the inner side sat Grimkell his court-bishop, and next him his other priests; on the outer side sat his councillors. In the other high-seat opposite the king sat his *staller*, Björn the Stout, and next him the guests.'⁷⁸ Thus the staller was next to the king in dignity; by the time the *Hirdskraa*⁷⁹ received its final form, he ranked second among the court officials, the chancellor holding first place.

That the English staller occupied a correspondingly high position, the sources clearly indicate. In a twelfth century account of the miracles of Saint Edmund, Osgod Clapa, at one time staller, is spoken of as of so great power, 'that, as standing next to the king, he was not to be feared less than the king himself.'⁸⁰ This, of course, is gross exaggeration, still, it testifies to Osgod's great fame. In Hermannus' work on the same subject, he is

⁷²It is used in this sense in the Eddic poems of the early tenth century. See *U. P. B.*, I, 227, 309. Keyser suggested this etymology in his work on the mediaeval constitution of Norway. *Efterladte Skrifter*, II, 81.

⁷³See Kluge, *Etymologisches Wörterbuch*.

⁷⁴*S. R. D.*, III, 156, note.

⁷⁵*Ibid.*: An. 1085, Petrum stabularium invenimus.

⁷⁶*Ibid.*: Sub Waldemaro II et postea stabularii titulus et dignitas vilescebat et exolere coepisse, inque ejus locum Marescalci nomen et officium inolescere videtur.

⁷⁷Near the north wall.

⁷⁸*Saint Olaf's Saga*, 55.

⁷⁹A law governing the royal household in Norway, amended and promulgated by Magnus Lawmender (1263-80).

⁸⁰*Memorials of St. Edmund's Abbey*, I, 135:ut secundus a rege non minus quam rex ipse cunctis formidandus haberetur.

called *major domus*.⁸¹ The importance of the office is also apparent from the language used in contemporary charters. In the king's writs, usually composed in Old English and peculiar to the half century just preceding the Conquest, the staller is frequently addressed along with the earl and the bishop.⁸² From this juxtaposition of earl, bishop and staller we should infer that the last named had some authority in the shire. But I cannot find that any particular territory comes under the exclusive authority of any particular staller.⁸³ The great prominence of this official also appears when we consider him as a land-owner. 'Æsgarus a certain staller' is spoken of in the *Historia Eliensis* as having forcibly seized on lands belonging to the monastery of Ely.⁸⁴ The 'land-hunger' must have been strong in him; an examination of Domesday will show that Æsgar staller was one of the greatest landholders in England at the time of Edward the Confessor; he had estates almost everywhere.⁸⁵ Almost the same can be said of Radulfus staller.⁸⁶ There can be no doubt that the stallership was the highest dignity at the Old English court when the Anglo-Saxon period came to a close.

As to the functions of this official the English sources give us very little information, and the Norse court-laws are of too late a date to be relied on for conditions in the eleventh century. The Norwegian staller in the thirteenth century had duties along three principal lines: he served as the king's spokesman on public occasions; he acted as chief and judge of the henchmen and presented their requests to the king; he provided horses or other means of transportation for his master's journeys.⁸⁷ But it seems, from

⁸¹ *Memorials of St. Edmund's Abbey*, I, 54: Inter quos quidam major domus Osgodclap cognomine vocitatus.

⁸² *K. O. D.*, No. 855: Eadward king gret Willem biscop, and Harold eorle, and Esgar stallere, and alle mine þegnas and mine holde frend on Middelsexum frendlice. See also Nos. 828, 843, 845, 859, 864.

⁸³ Æsgar is addressed on matters in Middlesex (*K. O. D.*, No. 855), Kent (No. 828) and Hertford (No. 864); Eadnoth on an affair in Southampton (No. 845); Robert on an Essex matter (No. 859); on a matter of business in Kent Edward addresses the archbishop, the bishop of Rochester, earl Leofwine and two stallers, Æsgar and Robert the son of Wymarch (No. 828).

⁸⁴ *Historia Eliensis*, I, 216: Æsgarus quidam stallere...

⁸⁵ *Domesday*, passim. The name appears as Asgar, Asgarus, Ansgerus, Angerus, Esgarus, etc.

⁸⁶ *Ibid.*, passim.

⁸⁷ *Norges gamle Love*, II, 411. Munch, *N. F. H.*, IV, 1, 601. Keyser, *Efterladte Skrifter*, II, 81. For the duties of the constable elsewhere on the Continent and in England at this period, see Stubbs, *C. H.*, I, 483-84. The Norwegian stallere differed from the constable in being primarily one who spoke to

the allusions to this same official in the Eddas, that his duties were much the same in the days of Saint Olaf and Cnut, except that in those days he was also a leader of the host.⁸⁸ Which of these duties devolved on the English staller we do not know. The fact that Eadnoth, a former staller, commanded an army in 1067,⁸⁹ suggests that the office may have been of a somewhat military character. Eadnoth must, it seems, have had some experience as a leader in war. He may have had charge of the royal stables, but the sources do not show it. There seems to have been a lower official, a king's marshal, who looked after the royal steeds. Florence of Worcester, writing soon after the Conquest, speaks of Ecgulf, Alfred's horse-thegn as *Ecgulfus strator regius*.⁹⁰ Again, in his account of the expulsion of the Normans in 1052, he mentions *Ælfredum regis stratorem* among those who were permitted to remain in the land.⁹¹ This is, doubtless, the *Alueredus marescal* who is mentioned in Domesday as holding lands in Edward's day.⁹² There was also one Roger who held the marshalship before the Conquest.⁹³ In the following reign the marshal was a far more important official. William had no staller.

The kings of Norway evidently had several stallers at the same time,⁹⁴ though one of them may have enjoyed a headship.

the populace on behalf of the king, and not one who commanded his armies. The 'court-law' says nothing of military duties.

⁸⁸The poets do not speak of the staller as a spokesman, but as such he is frequently alluded to in the sagas. See Snorre, *St. Olaf's Saga*, 68, 80. As an intermediary between the king and his henchmen we find Björn staller alluded to (Björn fell in battle, 1080). The poet praises him as a counselor and for having won favor for him with the King. *C. P. B.*, II, 129. Björn staller was a leader at Stiklestad where Saint Olaf fell (1030). At the battle of the River Niz (1052) Ulf staller, "he the king's friend, bade us lay his ship in the forefront of the battle by the side of the king's...." *Ibid.*, II, 224. (Vigfusson's translation.)

⁸⁹*A.-S. Chron.*, 1067: Eadnoð stallere heom wið gefeaht. *Flor. Wig.*, II, 8: Eadnothus, qui fuit Haroldi regis stallarius....

⁹⁰*A.-S. Chron.*, 897. *Flor. Wig.*, I, 115.

⁹¹*Flor. Wig.*, I, 210.

⁹²III, 216: Comes habet unam mansionem quae vocatur Stratona quam tenuerunt Alueredus marescalcus et Osbernus episcopus die qua rex E. fuit vivus et mortuus. See Round, *The Officers of Edward the Confessor: Eng. Hist. Rev.*, XIX, 80.

⁹³*Domesday*, II, 59. videntibus duobus hominibus scilicet Rogero marescalco et quodam Anglico... The occasion was a transfer of land by Harold's house-carle Scalpinus to his wife. The transaction seems to have taken place while Edward was still king. From his name and the fact that the other witness has his nationality so distinctly stated, we should judge that Roger was a Norman.

⁹⁴The Norse court-poets in speaking of the stallers frequently use the plural. See *C. P. B.*, II, 129, 184, 141.

It is possible that Cnut also had more than one such official at his court, but one only is mentioned in the records.⁹⁵ There were in all, so far as we know, eight stallers in Edward's reign: Bondig, Eadnoth, Ælfstan, Æsgar, Leofing, Osgod, Rodbertus and Roulf or Radulfus. Several of them, usually three, served at the same time. One of the earliest, and perhaps the most famous of them all, was Osgod Clapa. He was a Northman and probably served in the same capacity under the Danish kings.⁹⁶ His term of service ceased in 1047.⁹⁷ Ælfstan, whose name and title appear in a document from 1044,⁹⁸ seems to have been associated with him in the office. Æsgar first comes to our notice in 1052;⁹⁹ he seems to have continued staller till the close of the reign.¹ His colleagues in the years 1052 and 1053² were Leofing and Roulf. After the last named date we hear no more of Leofing. A document that Kemble places between 1060 and 1066 has the signatures of three stallers: Esgar, Roulf and Bondig.³ Bondus, Boding or Bondi staller is mentioned in Domesday, but not very frequently;⁴ in one entry he is called *Boding constabularius*.⁵ Eadnoth is the only one of Edward's stallers whom we know to have continued as such under Harold.⁶ He is mentioned but once or twice in the great survey.⁷ *Rodbertus regalis palatii stabilitor*, who, as we are told by the Con-

⁹⁵ *K. O. D.*, No. 1327: *bored steallare*. He was evidently a Dane. It is possible that one Tovi served as staller under Cnut, but the fact is not mentioned in any contemporary document. For a statement of the case see Freeman, *N. O.*, I, 521 ff.

⁹⁶ He was apparently connected with Cnut's household, as his signature is affixed to several charters given by that king. See *K. O. D.*, Nos. 1319, 1324, 1327. It was at his house at Clapham that Harthacnut died.

⁹⁷ *A.-S. Chron.*, 1047: *Man utlagode Osgod stallere*. After he was outlawed he turned viking and harried the English coasts (1049). He died in 1054.

⁹⁸ An agreement between Ægelric and bishop Eadsige signed by "Ælfstan steallere." *K. O. D.*, No. 773.

⁹⁹ *Ibid.*, No. 956: *..and on Esgeres stealres [gewitnesse] and on Raulfes steallres and on Lifinges steallres...*

¹ *Ibid.*, No. 828 (1066): *Eadward king gret...Esgar stallere..*

² *Ibid.*, No. 1337. Ælfifu's bequest.

³ *Ibid.*, No. 822. Birch (*Cartul.*, No. 929) places it between 1052 and 1070. The same names occur in *K. O. D.*, No. 813, with these titles: *Esgarus regiae procurator aulae*; *Radulphus regis aulicus*; *Bundinus regis palatinus*.

⁴ I, 146b, 148b, 218b.

⁵ I, 151.

⁶ *Flor. Wig.*, II, 3: *Eadnothus qui fuit Haroldi regis stallarius...* Cf. *A.-S. Chron.*, 1067; *K. O. D.*, No. 845.

⁷ I, 58b: *Eadnod stalre tenuit T. R. E...* There is also a reference to one *Almodus stalro* (III, 415) who held lands in Edward's day. I take *Almodus* to be a scribal error for *Eadnodus* or *Adnodus*.

fessor's biographer, was present at the king's death-bed,⁸ was doubtless the *Roberd Wymarche sune stallere* to whom greetings were sent in a royal mandate of 1066.⁹ *Rodbertus filius Wimarchi* became a great landowner after the Conquest. His name occurs almost everywhere in Domesday, though perhaps not as Edward's staller.

Of the nine or ten stallers whose names have come down to us, the earlier three, Thored, Osgod and Tofig (if he ever held the office) were Danes. Bondig's name has also a decidedly Norse appearance. Of the later ones, two, Radulfus and Rodbertus, were probably Normans. The remaining three were presumably Saxons.

In 1033, the year after the first mention of the staller,¹⁰ we note the earliest appearance of another Danish institution, the king's guard, usually known as the house-carles.¹¹ Writers on English history have paid considerable attention to this 'military household' and generally agree in ascribing its organization to Cnut; but on the origin and composition of the guard, its nature, its purpose and its final fate, the most diverse opinions are expressed.¹² The difficulty seems to be that no one has made a critical study of all the available sources. Of these there are three groups: the English documents from the eleventh century; the Norse poems from the same period and, for some purposes, the sagas and the laws; and the Danish histories of the twelfth century, the writings of Svenno and Saxo. Of these the second group is ignored or misunderstood by English writers,¹³ while

⁸*Lives of Edward the Confessor* (London, 1858), 431.

⁹*K. C. D.*, No. 828.

¹⁰*Ibid.*, No. 1327.

¹¹*Ibid.*, No. 1318. The grantee is called a minister in the document itself, but in an Anglo-Saxon rubric his title is translated huscari.

¹²These will be noted in their proper places.

¹³Lapenberg (*Hist. of Eng.*, II, 247-48) seems to have been the first writer on this subject who also used the Danish sources. His statements are gathered largely from Svenno and Saxo. Kemble follows Lapenberg in almost every detail. *Sax. in Eng.*, II, 118-24. He makes some use of the English charters, but, after all, adds but little to our knowledge of the subject. Freeman (*N. C.*, I, 297-98, 497-500) attempts a critical study of the Danish sources and in most respects his conclusions are correct, though stated with many misgivings and much doubt. His treatment of the subject is by no means satisfactory; still, it is, perhaps, the best available in English. Freeman wholly ignores the Norse sources. Ramsay (*Found. of Eng.*, I, 413-16) gives considerable attention to Cnut's guard, especially to its probable numerical strength. The subject is also treated, though very briefly, in Trall's *Social England*. The contributors, Oman (I, 184) and Powell (I, 135), apparently accept the conclu-

Scandinavian historians¹⁴ pay too little attention to the first. It should be added that Svenno's work has not, to my knowledge, been read in the light of other and earlier sources, as it should be to yield definite information.

English writers since the time of Kemble have looked on the royal guard of Cnut and his successors as "only a revival of the *comitatus*"¹⁵ and therefore essentially English. On the other hand Munch¹⁶ and Steenstrup¹⁷ trace the institution back to the famous viking fraternity of Jomburg in the tenth century. It seems probable that neither of these views is wholly correct. Taking up the English view first, we shall find that there was a profound difference between the old Anglian 'hearth-guard' and the mercenary bands that Cnut distributed in 'camps and castles.' Neither the name nor the institution can be found in the English sources before the Danish period. *Huscarl* is a Norse word,¹⁸ and one of the oldest in the language. In the Eddas it is used sometimes for servant¹⁹ and sometimes for henchman.²⁰ But when we come to the court-poetry of the first half of the eleventh century we find the latter significance the dominant one.²¹ House-carle, then, is the general term for member of a royal household; but when the early writers speak of the English house-carles,

alons of Freeman and, in part, those of the Norwegian historian, P. A. Munch. Green's statements relative to the house-carles (*History of the English People*, I, 100, *Conqu. of Eng.*, 414-15) are extremely unreliable.

¹⁴These are particularly Munch (*N. F. H.*, I, 2, 473) and Steenstrup (*Danelag*, 127-54). Steenstrup's discussion of this subject is by far the most thorough thus far produced either in England or in the North.

¹⁵Kemble, *Sax. in Eng.*, II, 124. Freeman (*N. C.*, I, 297-98) and Powell (*Social England*, I, 135) accept this view.

¹⁶*N. F. H.*, I, 2, 473. Munch holds that the remnants of the Jomburg guld entered into Æthelred's service, thus forming the corps afterward called the house-carles.

¹⁷*Danelag*, 147. Steenstrup believes that Cnut's household law, the *Lex Castrensis* of Svenno, was modeled on the Jomburg laws.

¹⁸It does not appear in the Anglo-Saxon Chronicle before 1036.

¹⁹The house-carles of the *Atla Lay* (placed by Vigfusson among the oldest epics of the Edda) must have been servants at court. They could not have been among the feasters for they helped Gudrun to burn the hall. *C. P. B.*, I, 51.

²⁰*Ibid.*, 336.

²¹Sighvat, one of Cnut's scalds, complains of efforts made to bribe St. Olaf's house-carles. *C. P. B.*, II, 134. He says in praise of King Olaf: "We have both made a good bargain; thou hast got a good house-carle and I have got a good liege-lord." *Ibid.*, 149. Thiodolf describes a battle and says: "We lessened the number of the earl's house-carles." *Ibid.*, 201. (The translations are Vigfusson's.)

they use the more specific term *þingamenn*²³ the whole guard being known as the *þingamannalið*²³ The origin of this word is a matter of dispute: most probable seems the explanation of those who derive it from Anglo-Saxon *þegnung*, *þenung* or *þening*, meaning service.²⁴ The form 'thenigmen' occurs in Alfred's will and evidently means trusted servant.²⁵ The genitive form appears in 'theningmannagemot,' a word that occurs in a document from Edgar's day.²⁶ The Norse 'thingamanna' could easily be formed from 'theningmanna.'

When we come to consider the corps of 'thingamen' as an organized guild, it will become clearly apparent that the institution as well as the name was unknown in England before the last great Danish invasion. But before proceeding with such an examination, it will be necessary to consider the argument of those who connect the corps of house-carles with the mighty *comitatus* of Jom. During the period of the viking-raids the Danes established themselves among the Slavic Wends in the region of present Pomerania. To guard their interests there they built the famous stronghold of Jomburg,²⁷ near the town of the same name.²⁸ This was the retreat of the Jomvikings, a brotherhood of pirates, bound by laws and regulations which the sagas give quite circumstantially. Membership was limited to warriors between the ages of eighteen and fifty. Every viking was sworn to revenge his fellows. Women were excluded from the stronghold. No member was permitted to absent himself for more than three days at a time. All news was first to be reported to the commanding chief. The leader also was to act as judge. Law-

²³I believe this word or any form of it occurs but once in the English sources and then in a Norman-English document, the *Leges Henrici Primi*, 15: "Denagildum quod aliquando þingemannis dabatur."

²⁴See Steenstrup's *Danelag*, 130 ff., for a discussion of the various forms in which these words appear in the Norse sources.

²⁵Such is Steenstrup's view (*Danelag*, 133). It seems rather strange, however, that the guard should be known by a Norse name in England and by an Old English name in the North. Other writers have tried to connect it with *thegn*.

²⁶*K. O. D.*, No. 314. The thenigmen are to assist the ealdormen in distributing the wealth bequeathed.

²⁷*Ibid.*, No. 1258.

²⁸Its establishment seems to date from the reign of Harold Bluetooth, Sweyn's father. The subject is discussed in the opening pages of Steenstrup's monograph, *Vænderne og de Danske*. Cf. *Saxo*, 325; *Knytilingasaga*, 1.

²⁹*Saxo*, 325: Apud Iulium. Adamus calls the place "nobilissima civitas Iumne." II, 19. The sagas speak of Jomsborg and Jomsviking. Jom was situated on the island of Wollin at the mouth of the Oder.

breakers were banished.²⁹ The only truly historic chief of the Jomvikings was the shrewd and treacherous earl Sigvaldi. With his leadership came a growing disregard for the laws of the guild,³⁰ and its power rapidly declined. The last great exploit of the Jomvikings was the attack on Norway which the crafty King Sweyn had induced them to make. At Hiorunga Bay Sigvaldi's fleet met that of Earl Hakon and was completely crushed.³¹ Sigvaldi saved himself by flight.

Of the subsequent history of Jom almost nothing is known. Many of the vikings seem to have enlisted in Sweyn's service when he invaded England, or, what is more likely, they may have made independent raids on the English shores. Sigvaldi may have died in England in the great massacre of 1002, for in 1009 we find his brother Thorkil the Tall coming to England to revenge a slain brother.³² Later in the year came another fleet under the leadership of Heming, Thorkil's brother, and Eilif.³³ The saga tells us, that, when the corps of 'thingamen' were established in London and Slesswick, Eilif and Heming were in command.³⁴ There probably were such bands, but most likely they were in Æthelred's service;³⁵ for in 1011 that king purchased peace and Thorkil became his man.³⁶ It is reasonable to suppose that Heming, the chief at Slesswick, followed his brother's example. The saga tells us that after Sweyn's death the English plotted a massacre of the two garrisons, which in great part

²⁹*Jomsvikingasaga*, 24. There were several other interesting regulations, but the ones given are the most significant. Whether these vikings originated them may well be doubted. I am inclined to believe that we have in them a statement of the rules governing the ideal comitatus. As the pirates at Jom composed perhaps the greatest comitatus ever organized in the North, it is reasonable to suppose that these laws were in force there; and that later tradition should also ascribe their authorship to the Jomburg chiefs is not strange.

³⁰Women were admitted to the fortress 'two nights or three, and the men were also at times absent longer than the law permitted.' *Jomsvikingasaga*, 24.

³¹According to Munch (*N. F. H.*, I, 2, 104) this battle was fought in 985-86. Storm in his edition of Snorre's history (*Olaf Trygvesson's Saga*, 35) dates it 994.

³²*Gesta Regis Cnutonis*, I, 2: ...ut fratrem suum inibi interfectum ulcisceretur. Cf. the Jomburg laws.

³³*Flor. Wig.*, I, 160-61 (1009):exinde, mense Augusto, alla classis Danorum innumerabilis, cui praeerant duces Hemingus et Egilafus....

³⁴*Jomsvikingasaga*, 50. Slesswick has not been definitely located.

³⁵The term 'Thingamen' (serving-men?) may have arisen at this time and from this service.

³⁶*A.-S. Chron.*, 1012 (1011?): Ða bugon to þam cyþinge of þam here XLV scipa.... Thorkil is found acting with Æthelred the next year. *Ibid.*, 1013.

succeeded.³⁷ Heming was killed, but Eilif escaped. Thorkil deserted Æthelred about this time,³⁸ perhaps because he now had another brother to revenge.³⁹ The vikings in England gathered about young King Cnut.

In the account of the massacre the saga relates that Thord,⁴⁰ a member of the Danish garrison at London, went out one day 'to the house of the woman who followed him.'⁴¹ Her home was outside the fortress—*utan borgar*—; she was evidently an English woman, at any rate she knew the plans of the English. Anxious to save her lover, she endeavored to induce him to remain with her till morning; failing in this, she revealed to him what her countrymen were plotting. From this it would seem that the London corps was governed by Jomburg laws.⁴²

But while admitting the presence of Jomvikings in Cnut's forces and higher councils when he finally got control of all England, I cannot subscribe to Munch's opinion that the corps of house-carles was simply the Jomburg remnant somewhat transformed.⁴³ If the sagas are correct there could not have been much of a remnant after the great massacre of 1015. And what of that splendid army that Cnut and Thorkil led to England that same year? 'In that host there was neither slave nor freedman, nor any one weak with old age; all were nobles, all vigorous with the strength of complete manhood, fit for all manner of battle, and so speedy that they despised the fleetness of cavalry.'⁴⁴

³⁷*Jomsvikingasaga*, 51. This must have occurred about 1015. The English sources are silent on this point, still, the story seems to have some foundation. Heming disappears from English history about this time, while Eilif (Eglafr) is found witnessing charters a decade later. See *K. C. D.*, No. 728. The massacre, if it occurred, serves to explain not only Thorkil's defection but also the great efforts put forth by the Danes to conquer England once for all. For a fuller form of this argument see Napier and Stevenson, *Crawford Collection of Charters*, 139-42.

³⁸*Gesta Cnutonis*, I, 2. He came to Denmark with nine ships.

³⁹Cf. Jomburg laws.

⁴⁰The editors of the *Crawford Collection of Charters* (148) suggest the possibility that this person may have been the one who later signed a charter as stallor. (149.)

⁴¹*Jomsvikingasaga*, 51: 7da dag jola gekk þorðr utan borgar til húsá konu þeirrar er honum fylgði.... The Icelandic idiom implies a mistress, not a wife.

⁴²It will be remembered that these laws required that all news be reported first to the chief; that members of the corps should not be absent for more than a definite period; that women should be kept outside the fortress.

⁴³*N. F. H.*, I, 2, 473.

⁴⁴*Gesta Cnutonis*, II, 4.

The author of this *Encomium*⁴⁵ also describes the splendor of the ships and the armament. He is, indeed, not to be taken too seriously; but Cnut no doubt led a valiant, well-equipped host. It is no doubt true that Danes and Jomvikings formed the larger part of Cnut's guard, as finally organized,⁴⁶ but by no means the whole. According to Saxo the warriors differed much in race, language and character.⁴⁷ The sagas bear similar testimony.⁴⁸

That the idea of forming such an organization should have been borrowed from Jom is also very improbable: more likely it was derived from the early court of Norway where a similar guard seems to have existed at least a century before the pirate-guild on the Oder was formed. The corps of house-carles was apparently not only a royal guard but also a standing army to occupy and defend the realm,⁴⁹ and keep the new subjects in awe and obedience. Such a force existed at the Norwegian court perhaps as early as the ninth century. In Hornklofi's Ravensong the valkyrie asks: "How does the generous prince deal with the men of feats of renown *that guard his land?*" The raven replies: "They are well cared for, the warriors that cast dice in *Harold's court*. They are endowed with wealth and with fair swords, with the ore of the Huns, and with maids from the east."⁵⁰ Hornklofi was Harold Fairhair's minstrel. That king was also a conqueror: his realm had been consolidated only after ten years of struggle.⁵¹ The royal guard *par excellence* was the king's 'bear-sarks,' or 'wolf-coats' as the poet calls them. These were the king's select champions,⁵² warriors in whom the *furor athleticus*⁵³ was exceptionally strong.

⁴⁵The *Gesta Onustonis* is also known as the *Encomium Emmae*.

⁴⁶Trall, *Social England*, I, 185: The enlistment of a number of the banished sea-rovers of Jom under Thuretyl the Tall was the nucleus of the force of housecarles. (F. Y. Powell.)

⁴⁷P. 352. Saxo also tells of a Slavic prince who joined Cnut's household. Cf. Kemble, *Sax. in Eng.*, II, 120; Freeman, *N. C.*, I, 497.

⁴⁸But the sagas add that the majority were Northmen: "oc mest af danscri tungo." *Morkinskinna*, 111.

⁴⁹Freeman, *N. C.*, I, 498: They were a standing army in days when a standing army was a new thing. See also Kemble, *Sax. in Eng.*, II, 118-119; Green, *Conqu. of Eng.*, 414-15; Ramsay, *Found. of Eng.*, I, 414.

⁵⁰*O. P. B.*, I, 256-57. (Vigfusson's translation. The italics are mine.)

⁵¹The dates usually given are 860-70.

⁵²*O. P. B.*, I, 257: Wolfcoats they call them, that bear bloody targets in battle, that redden their spear-heads when they come into fight, when they are at work together. (Vigfusson's translation.)

⁵³See Cleasby and Vigfusson, *Icelandic Dictionary*, Berserkr.

They guarded the forecastle of the king's ship, standing just behind the keepers of the royal standard.⁵⁴ Some of the sagas give twelve as the number of these wolf-coats, Egil's saga being the most explicit on this point.⁵⁵ Christianity did not look with favor on the bear-sark, and for that reason, perhaps, we find no trace of such select warriors among the house-carles. But otherwise the guard of 'thingamen' recalls Harold's Norwegian 'hird.' The wolf-coats and their associates were carefully selected;⁵⁶ they guarded the realm as well as the king's person; they were in a sense mercenaries.

As to the time when the royal guard was established in England the sources do not agree. Several of the sagas assume its existence before the death of Sweyn (1014).⁵⁷ The *Knytilinga-saga* states that it was formed immediately after his death by the Danish chiefs then in England.⁵⁸ But the chronology of the sagas is not to be trusted. It seems probable, however, that the term 'thingamen' came into use during the wars with Æthelred, for we find that in Thorrod's praise of Earl Erik the men who followed the earl against Ulfcytel are alluded to as 'thingamen.'⁵⁹ Svenno and Saxo hold that Cnut selected the men, organized the corps and promulgated the guild-law. This is the view generally accepted.

According to Svenno, Cnut's army contained men of all degrees of bravery, nobility and wealth. The king proclaimed that only those would be admitted to his chosen guard who bore two-edged swords with hilts inlaid with gold.⁶⁰ He tells us that the wealthy warriors made such haste to procure properly ornamented swords, that the sound of the sword-smith's hammer was heard all through the land.⁶¹ Thus the guard was made up wholly of

⁵⁴Snorre, *Harold Fairhair's Saga*, 9.

⁵⁵C. 9: En berserker konungs xij voro i soxum.

⁵⁶C. P. B., I, 257: The wise king, I trow, will only enrol men of high renown among them that smite on the shield. (Vigfusson's translation.) This is said particularly of the bear-sarks, but the regular guardsmen are also spoken of as "men of feats of renown." (256.)

⁵⁷*Jomsvikingasaga*, 50: Svelinn konungr setti þingamamannalið i tveim stöðum. . . . The *Saga of Saint Olaf* (9) assumes the existence of the thingamannalið before 1009, perhaps as early as 1002.

⁵⁸C. 7.

⁵⁹C. P. B., II, 105. Erik assisted Cnut in his invasion of England. He was made earl of Northumberland in 1016. See *Crawford Collection of Charters*, 144-48.

⁶⁰Svenno, *Lex Castrensis*, 2. (S. R. D., III, 144.)

⁶¹*Ibid.*

such as could add splendor to the royal retinue.⁶² It has been thought that this selection was made in 1018.⁶³ It could hardly have been later, as in that year Cnut sent his fleet back to Denmark, retaining only forty ships.⁶⁴ The guard existed in 1023; Osbern reports that a great multitude of house-carles were present at the translation of Saint Elphege's remains in that year.⁶⁵ An exact date cannot be fixed; it is also possible that the corps was to some extent a growth.

The laws governing Cnut's military household may be summarized as follows from Sveno's *Lex Castrensis*: The house-carles should be seated at the king's tables according to their eminence in warfare, priority of service or nobility of birth.⁶⁶ To be removed to a lower place was counted a disgrace.⁶⁷ In addition to daily fare and entertainment the warriors received wages;⁶⁸ according to Saxo these were paid each month.⁶⁹ The bond of service was not permanent but could be dissolved on New Year's Day only.⁷⁰ All quarrels were to be decided on the oaths of two house-carles in the gemot of the corps, the *Huskarlesteffne*, where the king was also to be present.⁷¹ Members guilty of minor offences, such as not caring properly for the horse of a fellow-guardsmen, were given lower places at the king's tables.⁷² If any one should have been thrice convicted of such misdeeds, he was to be given the last and lowest place at the tables, where no one was to communicate with him in any way; the feasters might, however, throw bones at him with impunity.⁷³ In controversies

⁶²Saxo (351) appears to think that personal bravery more particularly characterized the house-carles: "Jamque frequens ad Kanutum miles defuxerat, animis quam impensis onerosior. Plerisque enim amplior ulrium quam morum gravitas inerat...."

⁶³Such is the view of Steenstrup (*Danelag*, 138) and Freeman (*N. G.*, I, 297). Ramsay (*Found. of Eng.*, I, 414) holds that "the institution is carried back to the time when Thurkill's fleet was taken permanently into Æthelred's pay in 1014."

⁶⁴*A.-S. Chron.*, 1018.

⁶⁵Wharton's *Anglia Sacra*, II, 146: Divisus ergo a Rege Archiepiscopus cum ingenti Huscarilium turba praecedentes subsequitur. On the credibility of Osbern's account see Hardy, *Catalogue of British History*, I, 622.

⁶⁶Sveno, *Lex Castrensis*, 5.

⁶⁷*Ibid.*

⁶⁸*Ibid.*, 6.

⁶⁹Saxo, 351.

⁷⁰Sveno, *Lex Castrensis*, 7.

⁷¹*Ibid.*, 8: ...in colloquio quod dicitur Huskarlesteffne...

⁷²*Ibid.*, 5.

⁷³*Ibid.*

over lands and plunder the oaths of six house-carles were required, the six to be selected by lot from the division to which the accused belonged; but the power to decide still lay with the gemot.⁷⁴ Whoever should slay a comrade should lose his head or be driven into exile;⁷⁵ the Danish text says, 'he shall be driven off the king's estates with nithing's word, and shall be exiled from every land under Cnut's rule.'⁷⁶ *Crimen majestatis*, or treason, was to be punished by death and the confiscation of all the criminal's property.⁷⁷

These regulations were put into their present form four or five generations after their presumptive origin. We cannot, therefore, accept them as evidence without further investigation as to what extent they are to be credited, if they are to be credited at all.⁷⁸ It should be observed first of all that the house-carles in Sveno's law are the house-carles of the king of Denmark. In the twelfth century there seems to have existed at the Danish court a military guild whose traditions went back to the elder Cnut.⁷⁹ Scandinavian investigators apparently agree that by the end of the twelfth century, when the *Lex Castrensis* was put into writing, the corps had ceased to exist as a guard.⁸⁰ But Sveno tells us that, in the days of King Nicholas (1103-34), Christiernus, his own paternal grandfather, belonged to the guild and was tried for the murder of a fellow house-carle.⁸¹ There seems to

⁷⁴ Sveno, *Lex Castrensis*, 9.

⁷⁵ *Ibid.*, 10.

⁷⁶ *S. R. D.*, III, 162: ...tha skal han wrakas aff konungs garthe meth nithings orth, oc fly al land, ther Knut war konung lwer. Cf. *Lex Castrensis*, 10: ...cum proboso nuncupationis vocabulo, id est nithingsorth, ejectus abscederet.

⁷⁷ Sveno, *Lex Castrensis*, 14.

⁷⁸ The attitude of historians toward this work has been various. Danish investigators usually accept it without question, as do also Lappenberg (*Hist. of Eng.*, II, 247-48), Kemble (*Sax. in Eng.*, II, 119 ff.) and Ramsay (*Found. of Eng.*, I, 413). Freeman, on the other hand, has his doubts: "That Cnut did organize strict laws for the government of the force there is no reason to doubt; but I confess that in the *Leges Castrenses*, as we have them, there is much that has a mythical sound." *N. O.*, I, 497.

⁷⁹ Absalom's authority was the king himself. It is Absalom's work that Sveno claims to have translated.

⁸⁰ It is generally thought that the guard had developed into a new nobility, that the members no longer resided at court, and that a desire to know the obligations of these new aristocrats to their lord was responsible for Absalom's compilation.

⁸¹ Sveno, *Lex Castrensis*, 11. This grandfather was a man of prominence; two of his brothers were bishops and two others were "proceres."

be no reason to doubt this statement, as on this matter the author ought to be well informed. We may safely conclude that the guard existed in Nicholas' day and that its origin belongs to some earlier date. The four preceding reigns were brief and turbulent;⁸² it is not likely that such an institution as the one we are considering could have arisen in that period. The Danish sources assume that the guard existed in the earliest of these reigns, that of Harold (1076-80) and certain changes in its laws are attributed to him.⁸³ Sweyn Ulfsson, the father of these five kings and a nephew of the great Cnut, was an able and vigorous monarch. His reign was comparatively long (1047-76), and, if the corps described by Svenno in the *Lex Castrensis* is a purely Danish institution, it probably originated while he was king. He may have found the guild already organized in Denmark, or he may have formed it along English lines with warriors who had served in Cnut's guard as a nucleus.⁸⁴ It seems reasonable to suppose that the organization of house-carles in Denmark was, in a sense, a continuation of the great English corps.

It will not do to insist that Svenno and Saxo are correct in every detail as to the laws proclaimed by Cnut; during the intervening period certain changes had been made, several of which Svenno indicates.⁸⁵ But, if the *Lex Castrensis* is read in the light of the earlier sources, I believe it will be found that on the more important points, the origin of the corps, its membership and its corporate nature especially as revealed in its judicial authority and organization, Svenno's account may be accepted as fairly reliable. It may also be found that the 'law' is not wholly new,

⁸² Harold, 1076-80; Saint Cnut, 1080-86; Olaf, 1086-95; Erik, 1095-1108.

⁸³ See Holberg, *Dansk Rigslørgivning*, 4 ff. But the evidence for Harold's emendations are by no means conclusive.

⁸⁴ The restoration of the old royal line in England doubtless caused many Northmen to return to Denmark. Cf. *A.-S. Chron.*, 1047. Sweyn himself probably served in England under Harthacnut. His brother Osbern was in England till he was expelled. See *Adamus*, III, 13. Svenno (11) speaks of an old warrior, Bo Hethinsson, at one time a house-carle at Cnut's court, who was called on in the days of King Nicholas to declare the ancient customs of the guild in the case of murder. The story is improbable. If Bo served in Cnut's guard he would be extremely aged at the time indicated. Cf. Freeman, *N. O.*, I, 498.

⁸⁵ Such as substituting fines for capital punishment. *Lex Oastrensis*, 12. Cf. *Saxo*, 356. For the probable later additions to Cnut's guild-law see Holberg, *Dansk Rigslørgivning*, 37.

but is to a great extent a statement of old household customs common to the North and older than the power of Cnut.⁸⁶

The manner in which Cnut selected his men must have been to some extent an innovation. It seems to have been customary for the Scandinavian king to give a sword to the one who entered his service.⁸⁷ If the henchman was to be signally honored, the pledge would be a splendid blade with a gold-mounted hilt.⁸⁸ It will readily be seen that if the English guard was as large as has been represented to us,—three thousand men or more—the king would be put to great expense. But if each house-carle furnished his own sword, not only would the royal treasury be spared, but Cnut would also secure a guard drawn largely from the nobler and wealthier classes. The statement that a house-carle might leave his lord's service needs no comment. From numerous passages in the Norse laws and sagas it is evident that the relationship need not be permanent.⁸⁹ The further statement that Cnut released his men on New Year's eve only must be considered in connection with the fact that on this, the seventh day of the Christmas festival, it was customary for the Norse king to pay his house-carles their lawful wages,⁹⁰ to honor the more worthy ones with gifts and perhaps to make certain changes in the personnel of the guard.⁹¹ The custom seems to be at least

⁸⁶Ramsay (*Found. of Eng.*, I, 413) also looks on the *Lex Castrensis* as an ancient code, but apparently for a priori reasons only.

⁸⁷When Sighvat the Poet entered Saint Olaf's guard (ca. 1016) he composed a poem of which the following fragment has come down to us: "I willingly received the sword from thee, king, nor shall I ever repent it. We have both made a good bargain; thou hast got a good house-carle and I have got a good liege-lord." *C. P. B.*, II, 149. (Vigfusson's translation.)

⁸⁸The sword that Sighvat received seems to have been of such a character. He says in speaking of his pilgrimage: "War-weary I left the gold-wound battle-rod, which the king gave me.... I laid down the silver-hilted weapons and took up the consecrated staff. *Ibid.*, 148. (Vigfusson's translation.) Cf. *Ibid.*, 246.

⁸⁹In Norway the duties of the house-carles ceased with the king's death. Violations of the court law were punished by expulsion. *Norges gamle Love*, II, 399, 435 ff.

⁹⁰Keyser, *Efterladte-Skrifter*, II, 87.

⁹¹As the court was a law-bound guild of which the king was only a member, though a powerful one, no one could obtain membership except by consent of the house-carles. It was practically impossible to consult the whole guard at any other time than at the great festivals. It was, however, not always necessary to consult all. The 'Court law' of the thirteenth century speaks of this as an old custom: 'they shall ask admission to membership according to old custom: "sem forn er siðr til." *Norges gamle Love*, II, 439. Cf. *Ibid.*, 422.

as old as the time of Saint Olaf.⁹² We are told that the king provided entertainment for his men, but we need not take this to mean that the house-carles always dined in the king's presence. It was customary for the Norse king to eat and drink with his assembled guard at certain great festivals only.⁹³ The house-carles were then seated according to rank⁹⁴ and to be moved to a lower place was doubtless counted great dishonor. In earlier days the henchmen seem to have enjoyed great freedom at these banquets.⁹⁵

That the Norse house-carles received regular wages in the twelfth century is clear;⁹⁶ but what the custom was in the days of Olaf and Cnut, we do not know. Still, Svenno's statement that the English house-carles were mercenaries is doubtless correct. The saga calls them *málamenn*, men receiving wages.⁹⁷ Florence of Worcester speaks of them as *solidarii*⁹⁸ and William of Malmesbury calls them *stipendiarii*.⁹⁹ In addition to wages the chiefs evidently received landed estates. Of charters granting such favors to house-carles but few are extant;¹ most of our evidence on this point comes from Domesday. Thirty-three house-carles are mentioned in William's survey as holding lands prior to the

⁹² Snorre tells us of a gift given to Sighvat on a New Year's eve. *St. Olaf's Saga*, 172: 'He had, as he was accustomed to do, collected his valuables to distribute them as gifts of friendship on the eighth eve of Christmas.' Then quoth Sighvat (*C. P. B.*, II, 150): 'Swords gold-mounted are standing there; I would gladly take it, if thou wouldst give me any one of them; I have served thee long.'

⁹³ The 'guests' dined with the king at Christmas and Easter only. *Speculum Regale*, 259.

⁹⁴ *Norges gamle Love*, II, 143.

⁹⁵ *C. P. B.*, II, 149. Sighvat, when the court was crowded: "Ye are thronging about the good young king, and elbow each other so that I cannot get a word from Olaf." (Vigfusson's translation.) It should be added that the rude table-manners described by Svenno had evidently disappeared almost entirely by the time the *Lex Castrensis* was written. See *Speculum Regale*, 241 ff.

⁹⁶ *Ibid.*, 257 ff.

⁹⁷ *Knytingasaga*, 7.

⁹⁸ I, 204.

⁹⁹ *Gesta Regum*, I, 282. In speaking of the English at Hastings.

¹ *K. O. D.*, No. 1318. Cnut grants "VII terrae mansas...meo fideli ministro....Boul." To this is added a rubric in Anglo-Saxon in which Boul is called house-carle.

Ibid., No. 843. Edward confirms a grant to Westminster "swa full and swa forð swa ðurstan min huskaril hit furmost of me heold."

Ibid., No. 871. Edward confirms the right of Urk his house-carle to what wreckage might strand on his shore.

Conquest.² Usually it is stated that the holder was King Edward's house-carle.³ In only one instance does a house-carle holding land in Edward's reign hold the same estate in William's day.⁴ Nearly all the lands are located in the southern shires, more than half being in the counties of Middlesex, Buckingham and Hertford. No house-carle seems to have acquired lands in the old Danelaw.⁵ It has been observed by Steenstrup that the estates held by house-carles are of rather moderate sizes,⁶ ranging from half a hide to fifteen hides,⁷ the average being about four. But this writer overlooks the fact that great landed wealth in those days consisted less in large manors than in a number of estates sometimes contiguous, but frequently not.⁸ However, it is by no means likely that all the house-carles received lands or that those who were thus rewarded were given large estates.

²Summary by counties.

Buckingham, 7. I, 146b, 147, 149, 152, 152b.

Hertford, 5 (including one of Leofwine's). I, 136b, 138, 138b, 140, 140b.

Middlesex, 5 (including one of Harold's). I, 129, 130, 130b.

Gloucester, 3. I, 164, 167.

Suffolk, 3 (not king's house-carles). II, 441b, 442.

Bedford, 2 (including one of Algar's). I, 213, 216, 217.

Cambridge, 2 (including one of Walle's). I, 195, 202.

Somerset, 2. I, 95, 99.

Surrey, 2. I, 36.

Essex, 1. II, 59 (Harold's house-carle).

Sussex, 1. I, 17.

Berks. Rex Edwardus habuit XV acras in quibus manebant huscarles. I, 56.

Dorset. In Dorecestre T. R. E. erant CLXXII domus. Hae pro omni servitio regis se defendabant et geldabant pro X hidis, scilicet ad opus Huscarilum unam markam argenti. I, 75. (Similar payments were due from Brideport, Shaftesbury and Warham.

See also Steenstrup, *Danelag*, 151-53, where a somewhat similar table is found. The figures given above are, however, somewhat fuller than those of Steenstrup, who seems to have overlooked several entries.

³Several of those referred to in the table above were earls' house-carles and it is possible that a few of the remaining ones may have borne the title as a proper name. But in all such cases it is likely that the bearer at one time had belonged to the guard.

⁴I, 99: Huscarle tenet unam virgam terrae quam ipsemet tenebat T. R. E.

⁵It is true that we have been able to locate but a small number of such estates, but it is also true that titles are often omitted in the survey, especially in the case of Edward's tenants. Some of the house-carles may have been classed with the thegns. Thus we have Burcardus Huscarle (I, 146b) and Burcardus telgnus (I, 147). See also I, 152b, 217, 130b, 138, AIII and AchI.

⁶*Danelag*, 153.

⁷*Domesday*, I, 130: [Stanwelle, 15 hides.] Hoc manerium tenuit Azor Huscarle R. E. . . .

⁸Azor Huscarl had a manor of 15 hides in Middlesex (*ibid.*, I, 130); but other lands in the same county belonged to an Azor whose title is not given. As this name is not a common one, it is possible that the same person is meant in all cases. An Azor Huscarl also held lands in Buckingham. *ibid.*, I, 152b.

According to the *Lex Castrensis* Cnut's guard was an organized guild with a code of laws defining the rights and duties of the members and a house-carle-gemot—*huskarlesteffne*—by which these laws were applied. On this point also the Norse parallel is both interesting and instructive. In the household of the Norwegian king as early as the twelfth century and perhaps earlier, the *hírþelefna*, or assembly of the henchmen, was the ruling authority in all matters affecting the membership. It passed on the admission of new members, tried offences and expelled or otherwise punished the guilty. In theory at least, its power exceeded that of the king who was merely a member of the guild.⁹

Returning to the subject of Cnut's guard, we shall find that Svenno's statement as to its corporate nature is supported by the best contemporary source, the Anglo-Saxon Chronicle. Certain events recorded in that document receive an added significance when studied in the light of the *Lex Castrensis*. During the reign of Edward the Confessor, Swegen, the son of Godwin, became implicated in a revolt. He fled, but later returned and slew Beorn, a nephew of Cnut and a brother of Sweyn, then king of Denmark. 'And the king and all the *here* declared Swegen a nithing,' says the Chronicler.¹⁰ When we consider the crime, the court and the verdict, it becomes clear that we have here a formal act of the house-carle-gemot.¹¹ Here, in Anglo-Saxon, is usually, perhaps always, applied to an alien, generally a Danish host,¹² the native levy being known as *fierd* or *fyrð*. It will be remembered that, according to Svenno's statement of the 'court-law,' any one who was accused of slaying a fellow-house-carle should be tried by the house-carle-gemot and if guilty should be exiled and given the 'nithing-name.' Beorn must have been one of the chiefs of the royal guard, else we should look for

⁹For the organization of the Norwegian *hírð* see Keyser, *Efterladte Skrifter*, II, 77 ff.

¹⁰*A.-S. Chron.*, 1049: And se cing þa and eall here cwædon Swegen for niðing.

¹¹Freeman (*N. C.*, II, 67-68) sees in this the action of "a military gemot." The here he thinks "consisted of the king's *Comitatus* of both kinds, of the thegns bound to him by the older and more honorable tie, and also of the standing force of the House-carles, or at any rate of their officers." But the historian of the Conquest can find no other instance of such a "military gemot" in English history and has to content himself with references to Tacitus' *Germania* and to his own study of Greek federations (67, note).

¹²Bosworth-Toller, *Anglo-Saxon Dictionary*, Here: It is the word which in the Chronicle is always used for the Danish force in England, while the English troops are always the *fyrð*.

action on the part of the *witan* and not of the 'host.' *Morkin-skinna*, a collection of Norse sagas, declares that such was the case: 'and this was the beginning of the conversation between Asmund and Sweyn the king, that Sweyn Godwin's son had slain Beorn his father in the thingamannalith.'¹³ The term *nithing* is Norse both in origin and content. The group of crimes known to the Northmen as *nithing-deeds* was not so regarded by the Anglo-Saxons.¹⁴

Further evidence for the existence of such a *gemot* is found in the entries of the Chronicle recording the banishment of Godwin and his family (1051). In refusing to punish the citizens of Dover as the king had ordered, the great earl practically assumed the attitude of a rebel. Forces were gathered on both sides; in speaking of these the Chronicle uses the term *fiord*.¹⁵ In the hope, however, of reaching a peaceful settlement of the whole matter, the king called the *witan* to meet in *gemot* at London, at the same time also ordering out the *here*.¹⁶ Manuscript D calls this meeting a *stefna*,¹⁷ a term which recalls the *Huskarle-steffne* of the *Lex Castrensis* and the *Hirpsteftna* of the Norse laws. The two phrases, *bannan ut here* and *setton stefna ut to Lundene*, probably mean that the house-carles were called to meet in formal *gemot*. At this meeting Swegen was outlawed a second time.¹⁸ Godwin's case came next. 'But it was not agreeable to him [Godwin] to heed the summons of the king and the *here* that was with him; so he left during the night. And the king had a *witenagemot* the next morning and declared him an outlaw, and all the *here* [outlawed] him [Godwin] and all his sons.'¹⁹

¹³86: ... at Svein Gurbina son hafpl vegit Biornu favþur hans i þingamanna líþi vestr a Englandi.

¹⁴In this I follow Steenstrup (*Danelag*, 27). This author further contends that the word did not appear in England before Danish times.

¹⁵MS. D., 1052.

¹⁶MS. E., 1048: Ða gerasðde se cyning and his witan þæt man sceolde oðre syðan habban ealra gewitena gemot on Lundene to hærfestes emnihte and het se cyning bannan ut here.....

¹⁷MS. D., 1052:and setton stefna ut to Lundene. Steenstrup (*Danelag*, 182-83) places *stefna* among the Norse terms that crept into the Old English vocabulary during this period. Cf. Bosworth-Toller, *Anglo-Saxon Dictionary*, *stefnian*.

¹⁸Swegen had been restored to his rights in 1050 according to *Chron. C*.

¹⁹*A.-S. Chron.*, 1052, MS. D.: And man utlagode Ða Swægn eorl his oðerne sunu. Ða ne onhagode him to cumenne to wiðermale ongean þone cyng and agean þone here þe him mid wæs: for Ða on niht awæg. And se cyng hæfde þæs on morgen witenagemot and cwæð hine utlage and eall here hine and ealle his suna.

We are distinctly told that before the trial Godwin was summoned to make his defense before the king and the *here*, and that the latter body also acted when he was finally exiled. Everything considered, it is hard to escape the conclusion that the *here* was the corps of house-carles²⁰ and that this body was an organization with extensive jurisdiction over its own membership—a guild such as Sveno and Saxo describe.

But while the general constitution of the guild was unquestionably Norse in character, the judicial process of the house-carle-gemot seems to have been derived from non-Germanic sources, more particularly from canon law, either directly or indirectly through Anglo-Saxon legislation.²¹ Of the legal principles that seem to have had an Old English origin, the most noteworthy is the employment of the 'fore-oath': the accuser was required to swear that in presenting his charges he was innocent of all guile and was not moved by hatred or evil intent.²²

Of the guild as a military organization we know very little. According to Sveno the corps was limited to three thousand men;²³ Saxo gives six thousand as the number.²⁴ While neither of these writers can be relied on in matters of detail like this, it is likely that Sveno's statement is very near the truth.²⁵ The

²⁰If this explanation of the events of 1049 and 1051 has been proposed before, it has escaped my notice. Cf. Freeman, *N. C.*, II, 406: "I was puzzled fifteen years back at finding what appeared in one account as an Assembly of the Witan, described in the other as a gathering of armles. I did not then so well understand as I do now that in those days an army and a Witenagemot were very nearly the same thing." See also Kemble (*Sax. in Eng.*, II, 231) who also holds that Godwin was exiled by the witan.

²¹On this point I accept Holberg's conclusions in his comparative study of the *Lex Castrensis* and other legal systems of the same age, and from which I translate the following: "We find in this process the same mixture of Roman and Germanic law that is again found in canon law; and there is not a single point that does not find its prototype in the process which in those days was employed by state and church in England and in France. In other words: there is in the process of the *Lex Castrensis* no trace of any application of Norse or Danish legal principles." *Dansk Retslæstening*, 79-80. Holberg uses Saxo's account as the more specific on this point.

²²*Saxo*, 354. Cf. Schmid, *Gesetze*, 578, where the fore-oath (*for-að*) is discussed and references given to the laws of Æthelstan and Cnut. See also Holberg, *Dansk Retslæstening*, 48.

²³*Lex Castrensis*, 2: Cujus summa tria milia militum selectorum explevit.

²⁴P. 351: Ceterum Kanutus, tria prememorata regna circulens, clientelam suam, sex milium numerum expletem, sexaginta nautilis...distinxit.

²⁵Saxo tells us they were distributed among sixty ships. But one hundred to an eleventh century ship seems a rather high average. Harold Hardrada's great Dragon, perhaps the one in which he sailed to England in 1066, had seventy oars. This ship was, however, exceptionally large. See *O. P. B.*, II, 209.

Lex Castrensis implies that all were gathered about the king, but such could hardly have been the case. Saxo expressly denies it: in the summer they were abroad guarding the realm; in the winter they were quartered throughout the kingdom.²⁶ Saxo also tells us that a house-carle might have a home of his own.²⁷ There would be nothing strange about such an arrangement, but we cannot know to what extent the author is reading later Danish conditions back into English history. It appears from Svenno's 'law' that the corps was divided into four divisions and that these were again divided into smaller troops;²⁸ but on this question the contemporary sources are silent.²⁹

As to the final fate of the guild, three different views have been advanced. Ramsay holds that the last house-carle was dismissed in 1051.³⁰ Munch reaches the same conclusion, but believes the guild was revived by Harold.³¹ Nearly all others who have written on the subject believe that it existed without interruption till 1066.³² This diversity of opinion arises from the use of the term *litsmen* in the Anglo-Saxon Chronicle. If the word is Old English, it should mean sailor³³ and no difficulties will arise. If the term is of Norse origin it may mean warrior³⁴ and it would be possible to conclude that the entry recording the dismissal of 'all the *litsmen*'³⁵ refers to the house-carles. But the Chronicle also

The sagas speak of ships of all sizes, from such as hold twenty to others holding more than two hundred men. I should say that sixty would be a fair average. At that rate, if we connect the corps of house-carles with the forty ships that Cnut retained in 1018, it would number about 2,400 men, while Saxo's sixty ships would bring it up to 3,600. There is a fairly satisfactory discussion of this question in Ramsay, *Found. of Eng.*, I, 415-16.

²⁶P. 351: Eandem, estate pro tuendo Imperio excubantem, hyeme contuberniis discretam alere consuevit.

²⁷If a house-carle was summoned to appear at the gemot, notice was served once at his home and twice at his place at the king's tables; if he had no home, thrice at the king's tables. See Saxo, 354.

²⁸*Lex Castrensis*, 9. Cf. Steenstrup, *Danelag*, 141-46.

²⁹Kemble suggests (*Sax. in Eng.*, II, 122) that the stallers may have commanded the house-carles. As we found that there were several of these officials at the same time, three perhaps, it seems reasonable to assume that the corps was divided in England as it was in Denmark, one staller commanding each division. But this is mere conjecture and must be treated as such.

³⁰*Found. of Eng.*, I, 450-51.

³¹*N. F. H.*, II, 169, 320.

³²Such is the opinion of Freeman (*N. O.*, III, 499), York Powell (*Social England*, I, 135) and Steenstrup (*Danelag*, 140).

³³Bosworth-Toller, *Anglo-Saxon Dictionary*, Lidmann.

³⁴It is thus used by one of the scalds in speaking of the Norse forces at Stamford Bridge. *Morkinskinna*, 119. *O. P. B.*, II, 198.

³⁵*A.-S. Chron.*, 1050. MS. C.: þæs ylcan geares he sette ealle þa litsmen of male.

tells of nine ships of *litsmen* that were dismissed the year before: 'and they left the country with ships and with everything.'³⁶ The language here used would point to a naval force rather than to a land force such as we should expect the royal guard to be. Furthermore, it seems impossible that the Chronicler could have had the house-carles in mind, for we find these mentioned at a later period. The king's house-carles are referred to in connection with Earl Siward's invasion of Scotland in 1054.³⁷ Florence of Worcester, in his account of the Northumbrian rebellion of 1064, gives the names of two Danish house-carles.³⁸ That the corps existed in 1066 is hard to deny. William of Malmesbury tells us that Harold had scarcely any troops at Hastings but mercenaries: *stipendiarios et mercenarios milites*.³⁹ Snorre speaks of the 'thingamen' as fighting at Stamford Bridge.⁴⁰ Morkinskinna recounts the discussion among the Northmen when Harold's plan to aid Tostig became known: 'and there is also that troop called thingamen, which has been selected from various lands.... and they are the most valiant warriors, mighty and courageous, so that the prowess of one thingaman is considered equal to that of two of the best Northmen.'⁴¹ This disgusted Ulf staller and he replied in extemporized verse: 'It is no use for the king's marshals to turn into the fore-castle, if two of us, lady, are to fly before one Thingman. I did not learn this in my youth.'⁴² Evidently great apprehension did exist among the Northmen.⁴³ That the corps of house-carles was truly a valiant band was proved not only in the victory of Stamford Bridge but also in the defeat at Senlac.⁴⁴

³⁶1049, MS. C.:on þyson ylcan gear eadwerd cing scylode IX scypa of male; and hi foron mid scypon mid eallon anweg...

³⁷A.-S. Chron., 1054: Ac his sunu Osbern and his sweostor sunu Sihward and of his huscarlum and eac þæs cynges wurdon þær ofslegene.

³⁸I, 223: Danicos huscarlas Amundum et Beavensvartum...

³⁹Gesta Regum, I, 282:nam praeter stipendiarios et mercenarios milites, paucos admodum ex provincialibus habuit.

⁴⁰Harold Hardrada's Saga, 94: Riddarar 20 riðu fram or þingamannaliði. ...

⁴¹P. 111.

⁴²O. P. B., II, 252. (Vigfusson's translation.)

⁴³The king of Norway began preparations early in the spring before his English namesake (who was consecrated in January) could have proceeded very far with organizing a new force of house-carles. And had the corps been dissolved by Edward, the fact would have been known at the Norwegian court, especially as Tostig was with the Norse king.

⁴⁴No doubt there were individual house-carles who survived Senlac; but the organization evidently perished in that battle. House-carles are mentioned in

Before dismissing the subject it may be well to review briefly the history of the institution as it appears from the author's point of view. The guard of house-carles did not originate in England, nor was it first organized by King Cnut, it was a rather highly developed form of the Norse *comitatus* transplanted to English soil. In Norway we find such a corps as early as the ninth century; in England in the first quarter of the tenth; and in Denmark it had a vigorous existence a hundred years later. The traditions of the Danish court, however, refer the organization of the guild to the time of King Cnut, and the probabilities are that the corps in Denmark was at least as old as the English guild. Cnut's father, Sweyn, as overlord of Norway, certainly knew the customs of the Norwegian court, and he, too, may have had some sort of a military household. At least we know that there were warriors at all the courts in Scandinavia in that period, and that they were often, perhaps generally, called house-carles. It is therefore possible that the Danish conqueror brought such a corps with him when he invaded England, but if he did the guard was later enlarged by the admission of kindred elements: Jomvikings, Norse vassals and English warriors. This reorganization apparently occurred about the year 1018, and it seems likely that a guild-law governing the household was promulgated very soon afterwards. This was no doubt mainly a collection of older customs with such additions as circumstances demanded. That a *comitatus* of Scandinavian origin should have such a body of rules is not at all strange: the sagas of the next century have much to say of the laws that governed the conduct of the vikings. A runic inscription from about the year 500 also seems to indicate that the *comitatus* was a law-bound guild even at that early date. Furthermore we have the laws of the Norse court of the thirteenth century and these make specific reference to an older court-law. The house-carles were mercenaries in England as in Norway and in addition to wages, or what passed as wages, they appear to have enjoyed the privilege of dining in the royal presence, though perhaps only on certain festive occasions. The corps as an organized guild exercised its authority in the gemot of house-carles where the king was present, not as a master but as an influential member. Most likely the house-carles had to be

the Chronicle in connection with the uprising of 1070, but it will be observed that they were Danes and were found among the rebels.

consulted whenever the king proposed to admit new members to the guild; such at least was the case in Norway. The character of the household was mainly military, though not exclusively so: the Norwegian king could employ his house-carles in various administrative capacities, and we know that English house-carles were at one time employed in collecting royal revenues.⁴⁵ The membership was comparatively large, about three thousand in England, it seems, but if we consider Cnut's exceptional position this number is not unreasonably great. The Norwegian kings in the generation following Cnut's death had two hundred and forty house-carles of various grades at their court and many more elsewhere in the kingdom. Edward the Confessor continued the guard, but apparently reduced it materially. It appeared for the last time in organized force on the field of Senlac, where it perished fighting for Saxon kingship. In the North, however, the corresponding corps lived on for two or three centuries. In Denmark the guild developed into a new nobility; but in Norway we find the king's house-carles as late as the close of the thirteenth century still organized as a martial brotherhood and serving their royal master within the hall and without according to the laws of the guild.

⁴⁵*Fior. Wig.*, I, 195: Hoc anno [1041]....Heardecanutus suos huscarlas misit per omnes regni sui provincias ad exigendum...tributum.

CHAPTER VIII.

THE LESSER OFFICIALS AND SERVANTS OF THE COURT.

The four high officers of the Germanic courts represented the various departments of the household service. The great officials were the chiefs in charge. Each of these divisions no doubt had its full quota of lesser officials and inferior servants, the number varying with the importance of the department and the splendor of the court. As to the titles, numbers and duties of these, the English sources are not very explicit, but information is not wholly wanting.

In Eadred's will there is mention of an official who seems to have been connected with the service of the seneschal, namely the king's steward. That the latter was considered much inferior to the former appears from the fact, that while the seneschal was given eighty mancuses, the steward received only thirty.⁴⁶ The title does not occur very often; the mention in Eadred's will is the earliest known. We read of an earl's steward at Bamborough in 1093,⁴⁷ and of William of Eu's steward who was hanged in 1096;⁴⁸ the latter is called *dapifer* by Florence.⁴⁹ And in the entry for 1120 the Chronicler makes this very significant statement: 'on that journey were drowned the two royal sons...and very many of the king's household, stewards and chamberlains and butlers....'⁵⁰ The fact that no seneschal is mentioned in the account naturally leads to the inference that steward was the Saxon word for *dapifer* in the twelfth century. Even in the

⁴⁶ Birch, *Cartul.*, No. 912: And seican gesettan stigweard þritig mancusa goldes.

⁴⁷ *A.-S. Chron.*, 1093: Hine sloh Moræl of Bæbbaburh, se was sþæ corles stiward and Melcolmes cinges godsib.

⁴⁸ *Ibid.*, 1096: And his stiward Willeim hatte...het se cyng on rode ahon.

⁴⁹ *Flor. Wig.*, II, 39.

⁵⁰ ...and swyðe manega of þæs cynges hired, stiwardas and burþenas and byrlas....

tenth the words must have meant very much the same, as a gloss of that period has *discoforus, discifer vel stiweard*.⁵¹ But in this case there must have been some difference between popular usage and usage at court.⁵² In the half century just before the Conquest the office seems to have become general all over the country, but its functions are in every case such as we should assign to the seneschal.⁵³ It seems evident that in monastic establishments and in the house-holds of the king's vassals the two titles were used without much discrimination, and that after the Conquest the steward took the seneschal's place at the royal court also, in much the same way as the marshal superseded the constable.⁵⁴ But such a development could hardly have been possible if the stewards did not have some connection with the service of the king's tables in the earlier period.

The word *stiweard* is a compound of *stig* (Mod. Eng. sty), an enclosure, or if need be a building, and *weard* (Mod. Eng. ward), a guardian. The steward was originally the guardian of the enclosure; so much is clear from the etymology. A service of this sort has an interesting parallel at the Norse court. The king of Norway in the twelfth century⁵⁵ had a group of household servants called 'guests,' *gestir*.⁵⁶ These were the outer guards of the royal establishment (the *hirþmenn* kept the inner guard), but they also served as spies in times of war and rode royal

⁵¹ *Vocab.*, 223 :7.

⁵² See Eadred's will.

⁵³ In Leofgifu's will (*K. O. D.*, No. 931, undated but placed by Kemble late in the Saxon period) lands are given to three stewards, all servants of the testatrix. They cannot have been reeves, for a reeve is also remembered in the will. The stewards are placed well at the head among the different groups making up the household. In a body of guild rules from the same period (*ibid.*, No. 942) a steward occurs, plainly as one who has general oversight over the hall and other property of the guild. His permission must be obtained before a member can bring in more than a certain number of men. He also appears as the legal representative of the guild. The duty of distributing the bequests in Bishop Ælfric's will (*ibid.*, No. 759, placed late in the Danish period by Kemble) seems to be assigned to the stewards who are supposed to know which of the servants are to be remembered: "and sela man mina cnihtas þa minn stiwardas witan XXXX punda."

In Ælfric's vocabulary *stiweard* is translated *economus*. *Vocab.*, 129:13. This title occurs in two charters (*K. O. D.*, Nos. 1006, 622); but it cannot be affirmed that a king's official is meant in either case. According to Du Cange, *oeconomus* was sometimes used in the feudal period for dapifer or seneschal.

⁵⁴ Stubbs, *C. H.*, I, 373-74; Luchaire, *Hist. des Inst. Mon.*, I, 172.

⁵⁵ The sagas place this institution as early as the beginning of the eleventh century.

⁵⁶ See Cleasby and Vigfusson, *Icelandic Dictionary*, *Gestr*.

errands generally. The number of guests was always exactly half that of *hirðmenn* and their wages were also half as great. Still earlier we find a similar institution in Wales. On the subject of the king's retinue, the Latin translation of the old laws reads in part as follows: *Licitum regis est habere XXX^a sex homines equitantes in commitatu suo, id est, XXⁱⁱ III^{or} officiales suos, et duodecim hospites preter familiam, et optimates, et pueros, et iocculatores, et pauperes.*⁵⁷ As in the Norse household, the number of the lower officials is just half that of the higher. Furthermore, *hospes* in its general significance, is equivalent to guest. The Welsh word is *gwestai* which the English translator derives from *gwestva*, entertainment dues: "a term used for the provision or money-payment in lieu of it, due to the lord from the *uchelwyr* or free-holders."⁵⁸ The translator of the Welsh laws thinks the *gwestai* were "the persons who brought the *gwestva* or entertainment-dues from each *maenol* or manor to the lord."⁵⁹

It is extremely probable that there were officials in Old England whose duties resembled those of the Welsh *gwestai*. The Anglo-Saxon king had a right to demand a certain amount of provisions from at least some of his subjects, the *feorm* or *firma unius noctis*.⁶⁰ These dues may have been collected by the stewards and in that case we can readily understand how the later importance and significance of stewardship might be attained. The Norse guests and the English stewards resemble each other, it seems, in being primarily guards, and in their rank in the household. The stewards and the *gwestai* both appear to have duties connected with the king's tables. The guests and the *gwestai* are alike in their titles, which in both cases are rendered *hospites* in Latin.⁶¹ There is also the fact that in both house-

⁵⁷ *Ancient Laws of Wales*, 772. Cf. Seebohm, *Tribal System in Wales*, 163.

⁵⁸ *Ancient Laws of Wales*, Glossary.

⁵⁹ *Ibid.*, 4, note. On the subject of the probable relationship between the *gwestai* and the *gestir*, see also Steenstrup, *Danelag*, 124.

⁶⁰ In a Mercian charter from the close of the eighth century the grantee is released from all secular obligations to king or 'prince' "except in the matter of these dues, namely, for the rent at Westbury two tuns full of clear ale, and a coomb full of mild ale, and a coomb full of Welsh ale, and VII oxen, and six wethers, and XL cheeses and VI 'lang pero' and thirty ambers of rye corn, four ambers of meal, contributions to the royal vill." *K. O. D.*, No. 166. Thorpe, *Diplomatarium*, 39-40. Thorpe's translation. Cf. Seebohm, *Tribal Custom in Anglo-Saxon Law*, 431.

⁶¹ The Norse may have originated in a misunderstanding of the Welsh.

holds these officials are exactly half as numerous as the higher officials. The parallels, however, though interesting and worthy of some consideration, are by no means complete: the results reached after the most careful comparison still belong to the field of conjecture. But, if all these institutions have a common origin, the probabilities are that it was English. The Saxon court was the oldest of the three and doubtless exerted a powerful influence over the other two.

The Old English king seems to have been a great lover of the chase and was well provided with fowlers and falconers. These servants we know mainly from the charters⁶² and Domesday. All the *venatores regis* were, however, not connected with the chase: Ælfric in his *Colloquy* introduces us to a class of huntsmen whose occupation would scarcely be classed among the sports; their duties seem rather to have been to supply the king's tables with meats. Their methods were hardly noble, the net being a favorite instrument in the pursuit of their calling.⁶³ All the fruits of their labor belonged to the royal master.⁶⁴

The king's *venator* seems to have paid no attention to birds; they belonged to the province of the falconer or *accipitrarius*.⁶⁵ This servant is mentioned as early as the middle of the ninth century, when we find the first traces of an extensive hunting service. When the king traveled about with hawks and dogs and horses, the burden of feeding these would fall on the locality where the party might chance to be. In two Mercian charters from this period a release from this obligation is included in the list of immunities.⁶⁶ In the Confessor's day, the king's huntsman

⁶²In 956 Eadwig gave a mansa and a half 'to his beloved, faithful and most famous huntsman, Wulfric by name.' *K. C. D.*, No. 458. Æthelred in 987 gave three mansae and three perticae to his venator Leofwine. *Ibid.*, No. 658. Æthelstan Etheling willed a horse (or a herd of horses: *stod*) to his stag-hunter (*heah-deor-hunta*). *Ibid.*, No. 722. These gifts were doubtless to the more favored among the huntsmen, perhaps to the chiefs of the service. There were also villas dedicated to the chase. Edward in 904 issued a charter from such a "villa venatoria." *Ibid.*, No. 1085.

⁶³*Vocab.*, 92: *Plecto mihi retia, et pono ea in loco apto, et instigo canes meos ut feras persequantur, usque quo perveniunt ad retia improuise, et sic inretientur, et ego lugulo eos in retibus.*

⁶⁴*Ibid.*, 93: *Ego do regi quicquid capio quia sum uenator eius.*

⁶⁵An *anceps* is referred to in Ælfric's *Colloquy* who used the falcon in his profession, though perhaps not generally. There is no evidence that he was anybody's fowler; bird-catching was his means of procuring a livelihood. *Vocab.*, 95.

⁶⁶*K. C. D.*, No. 261, Berhtulf, 848: *...sit liberatum... illud monasterium... a pastu accipitrorum meorum omnium quam etiam uenatorum omnium, uel a*

and falconer were apparently the most important of the lesser officials at court. The *venator*, who a century before received only his daily fare and wear with an occasional 'horse or ring to encourage him in his art,'⁶⁷ was a feudal tenant in 1066.⁶⁸ It appears that several of these servants retained their holdings and perhaps also their offices even after the Conquest.⁶⁹ Their estates were usually small, from half a hide to two hides.

In Berhtulf's charter referred to above, there is also an allusion to the king's horse-thegns.⁷⁰ The term is an exceedingly general one; any person having the care of horses in some way or other would be a horse-thegn or *minister equorum*.⁷¹ The dignity of this thegn evidently was in proportion to that of his master. The position of the royal hostlers would therefore be an eminently honorable one. Over them all there seems to have been a *summus minister equorum*, called, however, merely *hors-þegn* in Anglo-Saxon. We read of two such officials in the Chronicle: Ecgulf, who died in 897, and Wulfric, apparently his successor, who seems to have died later in the same year.⁷² This official is not mentioned in Eadred's will, in fact, the only notice of such a court official is in the entries of the Chronicle just referred to. It was no doubt the office of the horse-thegn that later developed into the dignity of the marshalship.⁷³

There is a servant alluded to in Ine's laws, the *horswealh*, who is generally supposed to have been connected with the service of

pastu equorum meorum, sive ministrorum eorum. Similarly, No. 278, Burhred, 855. Cf. Nos. 223, 224, Egbert.

⁶⁷*Vocab.*, 93: Uestit me bene et pascit, aliquando dat mihi equum, aut armillam, ut libentius artem meam exerceam.

⁶⁸As the holder is nearly always a tenant in chief there can be little doubt that a king's *venator* or *accipitrarius* is meant, even where this is not explicitly stated.

⁶⁹*Domesday*, I, 36b: Wiwi uenator tenet de rege Liteltone. Ipse tenuit de rege E. Tunc II hidas. *Ibid.*, I, 50b: Godvinus accipitrarius tenet de rege dimidiam hidam. Idem tenuit de rege E. See also *ibid.*, I, 139b, 190b et passim.

⁷⁰...vel a pastu equorum meorum omnium sive ministrorum eorum. An earlier allusion to 'those who lead horses' is found in one of Egbert's grants. *K. O. D.*, No. 236.

⁷¹Mullo and agaso are translated horse-thegn. *Vocab.*, 33:24, 119:34, 356:11, 440:32. It is possible that the lowest order of stable servants were known as *pabulatores* or *hors-hierdas*. *Hors-cniht* was also a term used. Says Ælfric, '[Haman] led Mordcael...through the city as if he were his hors-cniht.' *Bibl. der ang. Prosa*, III, 99.

⁷²It is also possible that they were colleagues.

⁷³This subject has been discussed in part in connection with the stallerhip; see chapter VII. Cf. Stubbs, *O. H.*, I, 383; Round, *The Officers of Edward the Confessor*: *Eng. Hist. Rev.*, XIX, 90.

the king's stables: 'The king's *horswealh*, he who performs his errands, his wergeld shall be two hundred *scillings*.'⁷⁴ In the *Quadripartitus*⁷⁵ the title is translated *regis stabularius Waliscus*; but this explanation, though accepted by the editors of the Old English codes,⁷⁶ cannot be called satisfactory. We should expect most of the work about the royal stables to be performed by serfs. The *horswealh*, however, is not to be classed among the unfree.⁷⁷ His wergeld, though exactly equal to that of a common freeman, really indicates a higher rank. Being a Celt, his *wer* would be reckoned only half as great as that of a Saxon of equivalent social position. In his own race, the *horswealh* would stand comparatively high.⁷⁸ Furthermore, the fact that these *Wealhs* acted as the king's messengers goes to show that they could not have been bound to the service of the royal stables. It seems more reasonable to think of them as native Celts employed as the king's mounted messengers, carrying royal orders to the different parts of the West Saxon kingdom.⁷⁹

An entry in the Chronicle for 897 records the death of a *Wealh-gerefa* or Welsh-reeve. This title has been variously interpreted: Kemble believes it means a commander of the Welsh serfs at Alfred's court;⁸⁰ Earle holds that it refers to a reeve "commissioned to watch the Welsh border."⁸¹ But the probabilities favor neither of these interpretations. Wulfric, the reeve in question, was clearly a man of prominence or he would not have been mentioned in the Chronicle. Primarily, he was the king's marshal: 'The same year Wulfric the king's horse-thegn passed away; he was also *Wealh-gerefa*.'⁸² As horse-thegn he must

⁷⁴*Laws of Ine*, 33: Cynlinges horswealh, se þe him mæge gærendian, þæs wergeld bið eo scil.

⁷⁵Liebermann, *Gesetze*, I, 22.

⁷⁶Thorpe, *Ancient Laws*, Glossary: Horswealh, the Wealh or Briton who had the care of the (king's) horses. Schmid, *Gesetze*, Glossary: horswealh, ein Wille, der sur Pflege der Pferde bestimmt ist.... Liebermann, *Gesetze*, I, 22: Von einem [wälschen?] Königsmarschalk [Stallmeister].

⁷⁷Schmid thinks he was a serf: "...vielleicht auch nur überhaupt ein höriger Stallknecht...."

⁷⁸The wergeld of a 'Welshman' possessing one hide was 120 scillings; of one having half a hide 80; of a landless Wealh 60. *Laws of Ine*, 32.

⁷⁹There was a body of such servants at the Merovingian court called *cursores*. See Walz, *D. V. G.*, II, 2, 75..

⁸⁰*See in Eng.*, II, 179.

⁸¹*Two Saxon Chronicles* (Oxford, 1865), 321.

⁸²Two of the manuscripts have *Wealh-gefera*, which might mean Welsh companion. But the form *gerefa* in the other three is more probably the correct

have had charge of the royal stables, and being a court-functionary he could scarcely have acted as reeve on the frontier. As *Wealh-gerefa* he must have had charge of certain *Wealhs*; but these need not necessarily have been serfs. In Ine's day a *Wealh* had a wergeld even when landless.⁸³ To me it seems more reasonable to connect the 'Welsh-reeve' with the *horswealh* and to look upon Wulfric as master of the royal horse and chief of a body of mounted messengers, a service that was or once had been composed of Celts. It must be admitted, however, that this interpretation is also largely a matter of conjecture.

It would appear from certain rather doubtful allusions that the English king had a sword-bearer.⁸⁴ Several terms that might be applied to such a servant, such as *armiger*, *spatarius*, *wæpen-bora*, *swyrd-bora*, are found in the glossaries.⁸⁵ Bede's account of King Oswin's humility—how he gave his sword to one of his thegns and knelt at Bishop Aidan's feet⁸⁶—permits the inference that the Northumbrian king had such a servant. The term *armiger* is used for one who bore arms for King Edmund in Abbo's Epistle to Dunstan, written toward the close of the tenth century.⁸⁷ It is a significant fact that Ælfric in paraphrasing this account translates *armiger*, not with the general term *wæpen-bora*, but with the more specific word *swyrd-bora*.⁸⁸ This word occurs quite frequently in Anglo-Saxon, especially in the devotional writings of the time.⁸⁹ But as these are largely translations, they can hardly be placed among the sources of English institutional history: the terms used may simply represent an effort to express a foreign idea. Still, the continued use of

one. If Wulfric were a "conviva regis" of British nationality, we should look for Celtic elements in his name; but Wulfric is Teutonic, root and branch.

⁸³It should be remembered that as Alfred reenacted Ine's laws, such must also have been the condition in 897.

⁸⁴The sword-bearer, *spatarius*, was a well-known official at the Frankish courts. See Walz, *D. V. G.*, II, 2, 74-75; III, 509.

⁸⁵*Vocab.*, 142:8, 193:17, 332:24.

⁸⁶*H. E.*, III, 14: Porro rex....discinxit se gladio suo, et dedit illum ministro....

⁸⁷This *armiger* was a decrepit old man who once had related to King Æthelstan the story of Saint Edmund's passion. "Quibus fatebaris...quod eam junior didicisses a quodam sene decrepito, qui eam simpliciter...referebat gloriosissimo regi Anglorum Ethelstano, jurejurando asserens quod eadem die fuisset *armiger* beati viri, qua pro Christo martyr occubuit." *Memorials of St. Dunstan*, 379.

⁸⁸*Ælfric's Lives*, II, 314.

⁸⁹It occurs several times in the Old English version of Gregory's Dialogues. See *Bibl. der ang. Prosa*, V, 187, 300. It also appears in Ælfric's Homily on Saint Benedict. *Homilies*, II, 168.

swurd-bora where we might expect *wæpen-bora* or some other more general term indicates that the institution was not unknown in England. William of Malmesbury evidently believed that it had existed in Saxon times: he tells us of an *armiger* who was put out to sea in an open boat with the unfortunate Edwin, Æthelstan's brother.⁹⁰ But the sword-bearer's office, if it existed at all, could not have been counted among the more important ones at the Old English court.⁹¹

On the subject of the king's standard-bearer the English sources leave us in much doubt. The war-banner was one of the emblems of Teutonic kingship. It was born before the war-lord when the host was on the march,⁹² and it waved above him when the battle was on.⁹³ Beneath it stood Hygelac the Geat on the field where he fell before the onset of Franks and Frisians.⁹⁴ Naturally, the bearer and guardian of the king's ensign was considered an official of great importance. In the earliest days of Norse kingship the 'marksman,' *merkismahr*, was the highest in dignity among the king's men.⁹⁵ In *Beowulf* we apparently have the name of a banner-bearer, *Dæghrefn*, a warrior of the Hugs.⁹⁶ It is possible that the phrase 'guardian of the standard' used in this case means warrior in general;⁹⁷ but that the standard-bearer was known in those days as an important functionary appears from two passages in Bede's history. In the first Germanus,

⁹⁰*Gesta Regum*, 156.

⁹¹In the will of Æthelstan Etheling a bequest is made to the prince's *swurð-wita*: "And ic geann Ælffnoðe minon swurð-witan ðæs sceardan malswurdes." *K. O. D.*, No. 722; Thorpe, *Diplomatarium*, 566. There seems to be no reason why the second part of the compound should not be connected with *bewitan* or *bewitian*, to take care of or watch over. *Swurð-wita* would then mean sword-keeper. But Thorpe reads *swurð-hwita* and translate it "sword-furbisher."

⁹²This is vividly shown in *Exodus* where the advance of the Egyptian host is described: "Him þær sigc-cýning wið þone segn foran, manna þengel mearc-breote rad" (II. 172-73). There is, however, some disagreement as to the translation of these lines. On the general subject see Paul, *Grundriss*, II, 2, 126.

⁹³When the valkyries came to the host of Hakon the Good to select the worthy ones, they found the most excellent king under the war-banner. *C. P. B.*, I, 263.

⁹⁴*Beow.*, 1202-05.

⁹⁵Later he was superseded by the staller, the king's spokesman, who again had to yield to the chancellor or king's scribe. See Keyser, *Efterladte Skrifter*, II, 80, 82. The standard-bearer seems also to have been a great dignitary among the early Normans. Ordericus Vitalis mentions 'Roger Toni, standard-bearer of Normandy' among the great nobles in 1066. *History of England and Normandy* (London, 1853-56), III, 11.

⁹⁶*Beow.*, 2505: *cumbles hyrde*.

⁹⁷It appears to be thus used in *Riddle*, No. 41: *Ne mæg mec oferwipian segnberendra ænig ofer eorþan nymbe se ana God*.

acting as *signifer*, is described as rallying the Britons.⁸⁸ In the second we are told that King Edwin not only had a banner born before him in battle, but also when he traveled about the country in times of peace.⁸⁹ The duties of Edwin's *signifer* were doubtless of a heraldic order. John the Baptist is similarly spoken of in the Blickling Homilies: 'he...was standard-bearer of the heavenly King.'⁹¹ Words meaning banner-bearer frequently occur in the Glossaries and elsewhere,⁹² but, as a rule, we cannot affirm that a court-official is meant. The decline of the *signifer* seems to have begun early; he is soon lost in the great troop of thegns that throng the Saxon court. Still, there is no reason to think that his office wholly disappeared.

As to the appearance of the banner nothing definite is known. The term commonly used in describing it is *segen*; but *cumbol*,⁹³ *taen*, *thuf*⁹⁴ and other more or less metaphoric terms also occur. The standard is frequently alluded to in *Beowulf*, and from the language used we should infer that it was highly ornamented,⁹⁵ but we are not told how or with what device. It is not improbable that the Old English banner had, as has been suggested,⁹⁶ the image of a boar or some other animal as its distinguishing

⁸⁸H. E., I, 20: Tum subito Germanus signifer universos admonet et praedicat ut voci suae uno clamore respondeant.

⁸⁹*Ibid.*, II, 16: Tantum vero in regno excellentiae habuit ut non solum in pugna ante illum vexilla gestarentur, sed et tempore pacis equitantes inter civitates sive villas aut provincias suas cum ministris semper antecedere signifer consuesset.

⁹¹P. 163:22: He was segn-bora þæs ufancundan kyninges.

⁹²The Latin terms are draconarius, vexillifer, signifer. The Old English are segnbora, taenbora, taenberend. See *Vocab.*, 117:20, 142:10, 225:13, 332:27; *Ælfric's Grammar*, 27. A standard-bearer is alluded to in two spurious charters pretending to be dated in Æthelstan's reign. *K. O. D.*, Nos. 346, 1128. William of Malmesbury uses the word signifier in the sense of leader. *Gesta Regum*, 187. In Abbo's Passion of Saint Edmund, it occurs in the metaphor "signifer in castris aeterni regis." *Memorials of St. Edmund's Abbey*, I, 15.

⁹³Cumbol is a very general term; it may mean almost any emblem or even decoration. In the composition efor-cumbol, it could mean a banner with the picture of a boar on it; but it might also refer to the boar image on the helmet. Thus it is used in *Elene*, 256-59. Earlier in the same poem it is used for the sign that Constantine saw in his vision (l. 76).

⁹⁴The thuf was the particular kind of a banner that Edwin sent before him on his journeys.

⁹⁵A golden banner was placed on the ship that carried Scyld away (47). Hrothgar gave Beowulf a golden standard with an ornamented staff (1020-21). An all-golden banner is found in the Dragon's cave (2767-69).

⁹⁶By Dr. Friedrich Brincker in *Germanische Altertümer in dem angelsächsischen Gedichte Judith* (Hamburg, 1898), 17. Cf. Tacitus, *Germania*, 7; Müllenhoff, *Deutsche Altertumskunde*, IV, 200.

mark.⁷ The standard that Harold fought beneath at Hastings was graced with the image of a dragon.⁸

A thegn whose duties were to bring up and educate the royal princes is referred to in several of the older sources. The preceptor particularly mentioned is Thunor, *praepositus Ecgberhti Cantuariorum regis*, as Florence calls him.⁹ Elsewhere he is spoken of as 'thegn to his [the king's] children.'¹⁰ As Thunor is practically the only one who is known to have occupied such a position, it cannot be positively stated whether the office was regularly filled or not.¹¹ In Bede's history there seems to be an allusion to a king's almoner. He cannot have been a very important personage, however, as he has no distinctive title either in Latin or in Anglo-Saxon.¹² The Old English king doubtless had his *ostiarius* or door ward, and such a one seems to be mentioned in *Beowulf*.¹³ The cook and the baker do not appear in the English sources before Norman times; but we may safely assume that these useful servants were not wanting at the Anglo-Saxon court.¹⁴ Edward the Confessor had his own mead-maker; the office was doubtless an ancient one.¹⁵ Connected, no doubt,

⁷The banner assigned to the tribe of Juda (*Exodus*, 321) bore a golden lion. A raven graced the standard of the Norse invaders. See *A.-S. Chron.*, 878; *Gesta Ostonia*, II, 9.

⁸Worsaae, *An Account of the Danes and Norwegians in England*, 60: On the often-mentioned Bayeux tapestry is also represented the fall of the English Harald Godvinsøn at the battle of Hastings. The king's flag-bearer, or marksman, who, as well as the king, is on foot, bears a flag-staff on which is fixed a figure, probably of cloth, cut in the resemblance of a dragon, which was the royal mark of the Anglo-Saxon king.

⁹I, 259. In one of the later charters he is called princeps. *K. O. D.*, No. 900.

¹⁰*Saxon Leechdoms*, III, 424: . . . se leofestan ðegen to his bearnum.

¹¹That there were teachers at the royal court is a well-known fact. Wilfrid and Dunstan were both sent there to be educated. *Hist. York*, I, 4; *Memorials of St. Dunstan*, 11-12. Æthelwald learned many useful things from the wise men at Æthelstan's court. *Chronicon Monasterii de Abingdon*, II, 256. Still earlier, Alfred's court was almost a compulsory educational institution. See Asser in Petrie's *Monumenta*, 486. The early Capetian kings also had their preceptors at court. Luchaire, *Hist. des Inst. Mon.*, I, 165.

¹²Bede calls him the servant "cul suscipiendorum inopum erat cura delegata." *H. B.*, III, 6. Ælfric, in paraphrasing this account speaks of him as 'one of the king's thegns, the one who distributed his alms.' *Lives of Saints*, II, 180.

¹³When the Geats arrived at Heorot, they sat down on a bench outside and waited for an invitation to enter. Soon Wulfgar came out to learn who they were; he bore their message to the king and secured their admission. *Beow.*, 331 ff. The *ostiarius* is mentioned in the earliest Frankish sources. See Waits, *D. V. G.*, II, 2, 75.

¹⁴These were well known at the Frankish court. See *ibid.*, II, 2, 74; Luchaire, *Hist. des Inst. Mon.*, I, 164.

¹⁵*K. O. D.*, No. 845: *paðu mi meodes wrichte* . . .

with the service of the royal kitchen were certain thegns called *praevisores*. Often wealthy subjects would invite the king to their homes when he came into their region; but in such cases the king always wished to make sure that both hunger and thirst would be thoroughly sated and quenched. The *praevisores* were therefore sent ahead to inspect the supplies.¹⁶ The *carnifex* mentioned by Florence of Worcester was probably the king's butcher;¹⁷ strangely enough he is grouped with the great dignitaries of Harthacnut's court. A French monk who was highly skilled in medicine is said to have spent some time at the Confessor's court;¹⁸ it is probable that he was the king's physician.¹⁹ Among the servants of a more purely artisan character may be noted the king's smith,²⁰ his goldsmith²¹ and the *biga* who supplied him with carriages.²²

There were also certain classes of men on the royal estates who seem to have had no duties either as officials or servants. These were the *convivae regis*,²³ men of prominence who as the king's guests enjoyed royal hospitality for a longer or shorter period.²⁴ Such were probably the earlier *geneats*. The word *geneat* means primarily a companion and frequently occurs in compounds with

¹⁶When the holy woman Æthelþræd was preparing a banquet for her royal kinsman Æthelstan, the *praevisores* found a sufficiency of everything but mead. Knowing the profundity of the royal thirst, they informed her that a greater supply must be prepared. Æthelþræd resorted to prayers and the mead-casks proved equal to the occasion. *Memorials of St. Dunstan*, 17-18.

¹⁷I, 194: Thronð suum carnucem. Judging from the name we should say the incumbent must have been a Dane. For the meaning of *carnifex* see Du Cange, *Glossarium*.

¹⁸*Memorials of St. Edmund's Abbey*, I, 56: . . . quidam Baldwinus, ex Francie partibus gloriosus, monachus. . . sed et medicina peritus, ex hoc quoque a rege Anglorum cum multa diligentia habitus.

¹⁹Edward gave him an abbacy, perhaps as a reward. *Ibid.*

²⁰The *faber regis* was evidently a person of some importance. He is given special and prominent mention in one of the earliest sources: "Gif cyninges ambiht-smið oððe laadrinc mannan ofalehð, meduman leodgelde forgelde. *Lawes of Æthelþræt*, 7. We read in *Domesday* (I, 36), that a certain smith received half a hide from King Edward.

²¹Asser alludes to Alfred's goldsmiths (*aurifices*). Petrie's *Monumenta*, 486. In one of Eadred's charters (949) two manseas are given to one of the king's men "uoeltato nomine Ælfsige arcelus, ob studium quam mihi auri argentique fabricae sollicite deseruit atque decorat. . ." *K. C. D.*, No. 428. At the time of the Domesday survey, "Teodricus aurifabrus" held lands "de rege Edwardo." *Domesday*, I, 36b.

²²See *Ibid.*, I, 7, 7b, 8, 12.

²³Cf. Waltz, *D. V. G.*, II, 2, 103-4.

²⁴The term *conviva regis* may also be used in the broad sense of member of the king's household.

such a significance.²⁵ Perhaps those who came to the court to be educated should also be reckoned among the *convivae*.²⁶ Among the older we should look for the king's councillor's (*consilarii*) to whom the sources occasionally allude.²⁷ The Frenchmen whom Edward brought into his kingdom must be regarded as *convivae regis* at least until they had received official appointments.²⁸

To classify the members of the king's household, to say which of them were thegns or freemen or serfs, would be an impossibility. We can say only that all these classes were represented. Such terms as *satellites*, *palatini* and *sodales* are not used with a view to classification, but as general appellations for those in and about the palace who stood nearest the king. *Famulus* is another such inclusive term, but the *famuli* could not have been thegns: Bede carefully distinguishes between the two classes.²⁹ Florence, following Asser, speaks of the *familiares* and *ministeriales* of Alfred's court.³⁰ From Bede's account of the aggressions of these *famuli*, we shall have to conclude that they were at least freemen. Serfs were common on the royal estates as elsewhere.³¹ That the king held slaves appears both from manumissions³² and from direct statements in the earlier laws.³³

²⁵ Later the term came to be applied to one holding land by a particular tenure. See Seebohm, *English Village Community*, 128 ff.

²⁶ When Dunstan came to court he found a number of his young kinsmen there: "nonnulli propriorum sodalium et palatinorum, tum quam maxime vero consanguineorum suorum..." *Memorials of St. Dunstan*, 11.

²⁷ *Consiliarius* is often used as if a member of the witan is meant, as when Bede tells us that Benedict purchased three estates from "Aldfrido rege ejusque consiliarii," *Opera*, II, 149. But Wilfrid's position at court as "excelsus consiliarius" must be looked on as that of a *conviva*. *Hist. York*, I, 59; a contemporary account. The consiliarii mentioned in some of Egbert's charters were apparently higher ecclesiastics regularly counted among the witan (*K. O. D.*, Nos. 1031, 1035); but "Ædelfed consiliarius" who signed one of Eadred's charters and the two consiliarii Brihtic and Ælfgar who witnessed one of the Confessor's grants were most likely *convivae* and not regular officials. Birch, *Cartul.*, No. 876; *K. O. D.*, No. 811.

²⁸ *Lives of Edward the Confessor*, 399: Cum praedictus... rex repatriaret a Francia, ex eadem gente comitati sunt quam plures non ignobiles viri, quos plurimis honoribus ditatos secum retinuit idem rex, utpote compos totius regni, ordinariosque constituit secretorum consilii sui, et rectores rerum regalis palatii. (An almost contemporary account; written before the death of Queen Edith.)

²⁹ ... ministri quoque regis ac famuli. *Opera*, II, 219, Epistola ad Ecgbertum, 18.

³⁰ I, 89.

³¹ Queen Æthelflæd, wife of Edmund I, in her will gave freedom to half of her serfs. Thorpe, *Diplomatarium*, 519 n.; Birch, *Cartul.*, No. 1288.

³² One of Æthelstan's manumissions is extant. See Thorpe, *Diplomatarium*, 622.

³³ In the *Laws of Æthelbirt* there is a clear allusion to female slaves, the king's maids (*beowas*) who ground the corn (10, 11). The king's *esne* is mentioned in the *Laws of Wulfred*, 22.

The only document that gives us any information as to how the king's attendants were classified is Eadred's will.³⁴ The chamberlains, the butlers and the seneschals form the highest group; the priests rank next to them; the stewards form the third class; all the lower officials are classed together as the following shows: 'and to every one of those who are in my household, be he in what employment he may.' But that there was a still lower group is implied in the concluding words of this same statement: 'unless he be little bound to the throne.'

As to whether the palatines received any wages in the modern sense of the word, we are poorly informed. It is, however, not likely that the king's financial obligations to the great majority of his attendants and servants extended beyond furnishing the necessary shelter, clothing and daily fare. The huntsman in Ælfric's Colloquy received no pay; but the king gave him an occasional gift.³⁵ These gifts, as we have seen, often took the form of lands. Yet, in the language of Alfred's will, there is a suggestion of fixed payments and a regular pay-day: 'and to those of my serving-men whom I gave fees (*feoh*) at Eastertide, let them give two hundred pounds, and let them divide [the money] among them, to each one as belongs to him, in the manner in which I recently distributed [fees].'³⁶ Such a custom was the ruling one in Wales³⁷ and the Northern countries³⁸ and it would be strange if it was not also general in England.

³⁴ Birch, *Cartul.*, No. 912.

³⁵ *Vocab.*, 93.

³⁶ *K. O. D.*, No. 314.

³⁷ *Ancient Laws of Wales*, 3: Three times in the year the above twenty-four officers are entitled to receive, according to law, their woollen garments from the king and their linen garments from the queen; namely, at Christmas, Easter and Whitsuntide. (See also the pages following where the fees belonging to each office are given.)

³⁸ The Norse king paid most of his thegns small sums at regular intervals. See *Speculum Regale*, 261 ff.; Keyser, *Efterladte Skrifter*, II, 86-87.

CHAPTER IX.

THE DEVELOPMENT OF THE KING'S HOUSEHOLD IN
ENGLAND AND ON THE CONTINENT.

The effort thus far has been principally to determine how the Old English court was organized, what offices composed the royal service, and what functions were assigned to each. There remains the question of the possible origin of this organization: did it originate in England or was it introduced from abroad? The titles borne by the various officials closely resemble those generally used at the Continental courts of that period, and some of the later offices, such as those of the staller and the chancellor, are of unmistakably foreign origin. It seems evident, then, that between the king's household in early England and the neighboring courts on the Continent a close relationship must have existed. It is the purpose of this chapter to trace in outline the development of the Germanic courts in northern and western Europe in order to determine, if possible, to what extent the organization of the Anglo-Saxon court was influenced by Continental custom and what influence, if any, it, in turn, exerted on similar households of a later date.

The early Teutonic household was doubtless a very simple arrangement: the lord of the house, whether mere freeman or mightiest prince, seems to have exercised direct supervision over all the forces in his service. But as wealth and power increased, duties multiplied and the number of servants grew correspondingly. This necessitated some form of divided labor, and several household departments came into being. Of these there were commonly four: a steward (*infertor*) had charge of all that pertained to his master's tables; a butler (*scantio*, *buticularius*) provided his wine, beer and other beverages; his treasures were in the keeping of a treasurer or chamberlain; a marshal (*comes*

stabuli) was in charge of his lord's stables. At times the supervision of the whole service was placed in the hands of a separate official known as the seneschal or *major domus*.³⁹

The king, however, was more than a possessor of large estates and other forms of wealth, he was the lord of his people, their leader in war, their judge and protector in peace. As time passed these governing functions of kingship, continuously growing in extent and importance, necessitated the creation of new offices and new departments of service. These were sometimes given to the old household officials and thus the king's personal servants, by taking on new functions, were gradually transformed into public officials; but the general tendency was to give each new department its own responsible head. Thus the royal court developed both on the personal and on the political side.

Under the Merovingian kings the palatine service was divided among eight officials, all of whom, however, were not of equal rank. Lowest, perhaps, stood the master of the horse⁴⁰ and the chief butler.⁴¹ On a somewhat higher plane were the *thesaurarius*⁴² who kept the king's treasures, including his wardrobe and the like, and the seneschal. This official, who seems to have had the entire household service under his supervision, was also known as the *major domus*. But, after this title had come to mean so much on the political side of the court, the seneschal's title was revived and with it his former general functions.⁴³ It seems probable that he also supervised the table-service more directly, as the *infertor* is nowhere mentioned in connection with the Merovingian court.⁴⁴

These dignitaries all belonged to the household proper.⁴⁵ More purely political were the offices of the *major domus*, the count of

³⁹For the materials used in this chapter I am largely indebted to the constitutional manuals of Brunner, Keyser, Luchaire, von Maurer, Stubbs, and Waltz. See von Maurer, *Hofverfassung*, 189 ff., for a discussion of the primitive Germanic household.

⁴⁰The comes stabuli. See Waltz, *D. V. G.*, II, 2, 72.

⁴¹*Ibid.*, 74.

⁴²*Ibid.*, 73. He was also called cubicularius, though it may be that the cubicularius was an inferior servant who was sometimes invested with the treasurer's office.

⁴³*Ibid.*, 71. Cf. Brunner, *D. R. G.*, II, 104.

⁴⁴Brunner, *D. R. G.*, II, 101.

⁴⁵There were also numerous officials and servants holding subordinate positions. Such were the camerarii who assisted the thesaurarius; the pincernae who served under the chief butler; the marshals who performed certain duties

the palace and the *referendarius*. Finally, as a Christian ruler, the Frankish king had his own priests, chief among whom was the palatine abbot.⁴⁶

The duty of the count of the palace (*comes palatii*) was to assist the king in his judicial functions, not, however, as a representative or as one who has an independent jurisdiction, but rather as an executive officer who attends to the legal machinery and to the details of the trial.⁴⁷ His office was of Germanic origin.⁴⁸ That of the *referendarius*, on the other hand, was originally Roman both as to name and functions.⁴⁹ The duties of this official corresponded to those of the later chancellor: they related to the keeping and the preparation of royal documents. The scribal work was performed mainly by his assistants who were known as *notarii* and *cancellarii*. Unlike his Carolingian successor, the *referendarius* was a secular dignitary, and had nothing to do with ecclesiastical affairs.⁵⁰

The highest official at the Merovingian court was the *major domus*. Originally he was merely the seneschal or chief servant of the household. 'To his older duties he added others of a more directly political nature: he commanded the king's antrustions, supervised the education of the palatine youths, served as his lord's representative in judicial affairs, acted as peace-officer when quarrels arose among the great lords of the kingdom, sat highest among the king's councillors and even controlled his master's possessions to a great extent.'⁵¹ The history of this official under the later Merovingians is well known. The Carolingian monarchs appointed no mayors and the office disappeared.⁵²

Generally speaking, the Carolingian kings and emperors retained the household system of the preceding dynasty.⁵³ Certain

under the orders of the *comes stabuli*; there were also the cook, the *mapparius* whose duty was to hand towels to the king, the *spatarius* who carried his sword, physicians, minstrels, goldsmiths, door-keepers, couriers and others. See Walts, *D. V. G.*, II, 2, 73-75; Brunner, *D. R. G.*, II, 101-02.

⁴⁶Walts, *D. V. G.*, II, 2, 102.

⁴⁷Brunner, *D. R. G.*, II, 108-10; Walts, *D. V. G.*, II, 2, 76-79.

⁴⁸Walts, *D. V. G.*, II, 2, 76.

⁴⁹*Ibid.*

⁵⁰*Ibid.*, 80-82; Brunner, *D. R. G.*, II, 113-14.

⁵¹Walts, *D. V. G.*, II, 2, 83 ff.; Brunner, *D. R. G.*, II, 104-08.

⁵²It should be added that practically all the higher offices at the Merovingian court, including that of the *major domus*, could be held by several persons at the same time.

⁵³Luchaire, *Hist. des Inst. Mon.*, I, 163.

changes had come about, however, the most important of which was the suppression of the mayorship. The position of the senechal had declined somewhat: instead of being the chief of the household he was now merely *infertor* or master of the royal tables.⁵⁴ The butler, on the other hand, had risen in rank and dignity and had taken his place among the highest officials at court.⁵⁵ The palatine count also occupied a more exalted position during the Carolingian period; certain functions of a judicial and notarial character formerly belonging to the *major domus* and the *referendarius* were now exercised by him.⁵⁶ The keeper of the king's strongbox was now known as *camerarius* instead of by the older title *thesaurarius*; his assistants bore the title of *cybicularii*.⁵⁷ In the notarial office great changes had taken place. The title of *referendarius* had gone into disuse and the chief scribe was now known as chancellor (*cancellarius*) or archchancellor.⁵⁸ The office itself had taken on an ecclesiastical character; it was united to that of the archchaplain, and henceforth the chancery and the royal chapel were almost identical.⁵⁹ It will readily appear that this consolidation of notarial and clerical offices would tend to transform the rather insignificant *referendarius* into an influential and powerful chancellor.

The confusion that followed the decline of the Carolingian dynasty also extended to the royal household. In the tenth and eleventh centuries the palatine hierarchy in the Frankish kingdom seems to be undergoing constant changes both in relative rank of offices and in the duties assigned to each.⁶⁰ Two ruling tendencies, however, are apparent: to change the character of the offices from personal to public, and to feudalize the same by assigning them to certain powerful families.⁶⁰ From the very beginning the kings seem to have employed their palace officials in occasional public capacities as judges, ambassadors, military com-

⁵⁴Waltz, *D. V. G.*, III, 499-500.

⁵⁵*Ibid.*, 501.

⁵⁶Brunner, *D. R. G.*, II, 110-12.

⁵⁷Waltz, *D. V. G.*, III, 502; Brunner, *D. R. G.*, II, 101.

⁵⁸Waltz, *D. V. G.*, III, 513, note.

⁵⁹*Ibid.*, 516 ff.; Brunner, *D. R. G.*, II, 114-17. This union of offices was largely due to the fact that the royal chapel in Carolingian times came to be used as the chief depository for royal documents; the employment of clerks as scribes led to the same result.

⁶⁰Luchaire, *Hist. des Inst. Mon.*, I, 163 ff.

manders and the like;⁶¹ but now the public functions of these dignitaries become regular and continuous, while their household duties pass into the hands of a lower order of servants.⁶² The feudalizing tendency was vigorously resisted by the kings, and the result of their opposition was that in a few centuries the grand offices of the household had been abolished or reduced to honorary dignities.⁶³

The household system of the Carolingians was retained both by the early Capetian rulers in France and by the imperial masters of Germany.⁶⁴ The palatine count, however, soon disappeared from the French court,⁶⁵ thus leaving in control the five historic court-officials: the seneschal, the chamberlain, the chancellor, the constable and the butler. Of these the seneschal was easily the most eminent: he had inherited nearly all the supervising power of the original mayor of the palace, the judicial authority of the palatine count and the duties of steward in the royal kitchen; to these functions was added supreme command of the king's armies.⁶⁶ But his royal master soon realized the danger in permitting the concentration of so much power in one official hand, and before the close of the twelfth century the seneschal's office was practically suppressed.⁶⁷ His military powers were now entrusted to the constable;⁶⁸ but again the subject threatened to become too powerful for his lord, and after 1475 the constable's office was usually left vacant.⁶⁹ During the period of his political eminence he had ceased to be a household official, his duties at court being performed by the marshal.⁷⁰ The history of the butler and the chamberlain closely resembles that of the seneschal and the constable. As their duties at court came in time to be performed by a lower order of servants, their own offices were reduced to honorary dignities and were finally left vacant or wholly suppressed.⁷¹ The chancellor alone survived into modern times.

⁶¹Waltz, *D. V. G.*, II, 2, 72 ff.

⁶²Luchaire, *Hist. des Inst. Mon.*, I, 171-94, *passim*.

⁶³*Ibid.*, 195-96.

⁶⁴*Ibid.*, 163; Waltz, *D. V. G.*, VI, 327.

⁶⁵*Ibid.*, 170.

⁶⁶*Ibid.*, 178-80.

⁶⁷*Ibid.*, 185.

⁶⁸*Ibid.*, 171.

⁶⁹Viолlet, *Histoire des Institutions Politiques*, II, 116-17.

⁷⁰Luchaire, *Hist. des Inst. Mon.*, I, 172.

⁷¹The camerarius disappeared in the twelfth century (Viолlet, *Histoire des Institutions Politiques*, II, 128) and the butler in the fifteenth (*ibid.*, 118, note).

At the imperial court of mediaeval Germany, the household officers did not rise to so great a power as in Capetian France;⁷³ nor did they entirely lose their character as personal servants of the emperor.⁷⁴ The chancellor alone may be said to have attained an influential position.⁷⁵ The German monarch preferred to assign public duties to ecclesiastics rather than to the lay members of his household,⁷⁶ hence the great importance of the mediaeval chancery. But, in the Empire, as in earlier France, all these dignities finally became mere titles and passed into the hands of certain leading feudal princes.

The last Teutonic court to be organized was that of Norway. As this differed in some respects from the Frankish type, it deserves to be examined somewhat closely.⁷⁸ The earliest Norse sources speak of three classes of 'kings-men,' the 'hirdmen,' the 'guests' and the 'house-carles.' Of these the 'hirdmen' composed the king's select guard; they usually served to the number of six or twelve at a time. In the days of Saint Olaf, sixty 'hirdmen' were with the king on his royal estate; half a century later the number was increased to one hundred and twenty. In the twelfth century it seems to have been still greater. The guests served as the outer guards at the royal vill and were frequently employed as the king's messengers, going as such to every part of the realm. Their number was half as great as that of the 'hirdmen.' Like these they were entertained at the king's vill, but sat at his tables only on great festive occasions. The house-carles were the servants who performed the actual labor on the king's manor.⁷⁷ Later two other classes appear, the table-servants (*skutilsveinar*) and the candle-bearers (*kertisveinar*). The former were chosen from among the 'hirdmen' and acted principally (two each day) as his majesty's body-servants; but at great festive gatherings they served the king at his table as bearers of cups and dishes, hence their name. Among the servants at court they ranked the

⁷³Waltz, *D. V. G.*, VI, 332.

⁷⁴*Ibid.*

⁷⁵*Ibid.*, 336 ff.

⁷⁶*Ibid.*

⁷⁷The following account is summarized from Keyser's study of the Norse Constitution in the Middle Ages, *Efterladte Skrifter*, II. The principal sources are the *Speculum Regale* and the *Hirðskraa* (Court-law) published in *Norges gamle Love*, II.

⁷⁸Keyser, *Efterladte Skrifter*, II, 78-79.

highest.⁷⁸ The candle-bearers were pages, sons of the noblest families, who were not yet counted among the kings-men, but were being educated for service at court. Their duty was to hold candles at the king's tables when he feasted with his great lords.⁷⁹

In time four leading officials came to be recognized at court, all being appointed from the 'hirdmen's' class: the marksman (*merkismaþr*), the staller (*stallari*), the *dapifer* (*drottseti*, from German *truchsess*?) and the butler (*skenkari*). The marksman's office seems to have been of great antiquity, at the beginning of the truly historic period his dignity was the highest at court. On sea he defended the forecastle of the king's ship; on land he bore and defended the royal banner.⁸⁰ As royal authority grew stronger and a truer kingship developed out of what was once scarcely more than military leadership, the marksman's dignity sank to a somewhat lower plane and the staller took his place at the head of the court. This official was primarily a spokesman: he addressed the popular assemblies on the king's behalf and in turn advised the ruler as to the wishes and requests of the freemen. He was responsible for good order and proper discipline at court, and all disputes that might arise within the household were referred to him for settlement. Incidentally, he had to provide the necessary equipment for the king's journey, and hence may have had supervision of the royal stables.⁸¹ Far below the staller and the standard-bearer both in rank and importance were the *dapifer* and the butler. Both were chosen from among the table-servants and for a long time were household officials merely;⁸² but soon after the beginning of the fourteenth century, we find the *dapifer* as the highest official, not only in the king's household, but in the state as well.⁸³

The Norse court was also thoroughly organized on the ecclesiastical side. The first Christian rulers had a court-bishop (*hirþ-biskup*) who traveled about with them and assisted in the work

⁷⁸Keyser, *Efterladte Skrifter*, II, 79.

⁷⁹*Ibid.*, 79-80. There was also a candle-bearer at the Welsh court.

⁸⁰*Ibid.*, 80.

⁸¹See *Ibid.*, 80-81; Munch, *N. F. H.*, IV, 1, 612. It will be readily seen that, in a land where the sea was the principal highway, supervision of the king's stables could not have been considered among the important charges.

⁸²Keyser, *Efterladte Skrifter*, II, 81.

⁸³*Ibid.*, 134.

of conversion. After this had been completed, the bishop seems to have left the court and given place to the household-priests (*hirþprestar*). As elsewhere, the king's chaplain did not remain a spiritual guide merely, but became a public functionary as well; he was the king's notary and perhaps also his treasurer.⁸⁴ In time the king's chapel developed into a chancery with a chancellor at its head.⁸⁵ In the reign of Magnus Lawmender (1263-80), the chancellor is spoken of as the highest official at court.⁸⁶

Of these officers the marksman and the staller are doubtless of Norse or early Teutonic origin. The standard-bearer seems nowhere else to have held an eminent position in the royal household. It is also difficult to find officials elsewhere that correspond to the Norse staller. Were his office of Frankish origin⁸⁷ his functions should have corresponded to those of the Capetian constable, but such is not the case. Much more does he remind us of the early Merovingian seneschal or *major domus*. As no marshal can be found it is probable that at some early date the care of the king's horses passed into the staller's hands. With respect to the table-servants Snorre tells us that in appointing these the king followed the custom of foreign courts.⁸⁸ As the steward (*dapifer*) and the butler were chosen from these attendants, it seems probable that these officials were not originally Norse. It may be added that the earliest Norse sources make no mention of a chamberlain or a treasurer.⁸⁹

Turning to the English court, we find but few traces of an organization before the tenth century. The household of the Anglo-Saxon kings in the earliest period was apparently wholly Teutonic, and, so far as we know, it remained so for some time. The king had his thegns or household servants and perhaps a seneschal or *ofercaldorman* who had charge of them all; but anything like a systematic distribution of duties or the formation

⁸⁴Keyser, *Efterladte Skrifter*, II, 82.

⁸⁵*Ibid.*, 82-83.

⁸⁶*Ibid.*, 82.

⁸⁷Such is Keyser's opinion. See *Efterladte Skrifter*, II, 81, note.

⁸⁸In the *Saga of Olaf the Quiet* (whose reign dates from 1066, when his father fell at Stamford Bridge) Snorre says: 'King Olaf also, after the custom of foreign kings, appointed table servants who were to stand at his tables and serve the dishes to himself and the princely subjects who sat at his table.' (C. 3.)

⁸⁹Cf. the Salic Law (Geffcken), X, 4, where a major, an infertor, a scantio and a mariscalcus are referred to, but no camerarius or thesaurarius.

of a household hierarchy is not apparent. It may seem strange that the close communication existing between England and the Continent ever since the days of Augustine should not have affected the royal surroundings. No doubt it was influential to a certain extent, though it may be that the introduction of foreign elements was for a long time limited to the ecclesiastical side of the court. Moreover, the possibility of influence was not great, for the kings of Kent and Wessex were not mighty emperors like Charlemagne and Otto. An elaborate organization could hardly find room within the cramped limits controlled by the royal lords of the Old English states.

Foreign influences begin to appear in the tenth century, when the Anglo-Saxon kingdom has at last become a unified fact. After the Danish invaders had slain or exiled the rulers of the northern kingdoms the people naturally turned to the only native dynasty remaining, that of Wessex represented by the resourceful Alfred. The unification of England was in a sense the expansion of Wessex. This process, beginning at Wedmore, was practically finished at Brunanburh in the reign of Æthelstan. This event, which in so many respects is a landmark in English history, is also a landmark in the historic development of the English court. It is about this time that the palatine officials first begin to appear prominently in the sources. Their offices no doubt existed at a much earlier period, for Asser speaks of a butler in the reign of Alfred's father;⁹⁰ but not before the great age of the Old English monarchy, the age of Æthelstan and his successors, were the chiefs of the royal household counted sufficiently important to be summoned to witness the king's charters, nor are their titles mentioned in the text of any such document issued before this period. If formerly they had appeared at the great council, they had come simply as *ministri*; but they were no longer mere thegns, they were something more. As butlers and chamberlains and seneschals they had advanced to a higher dignity; and yet, they evidently remained household officials only. There is no evidence that their new greatness contained any political elements except, perhaps, membership in the *witenagemot*. The first and apparently the only English court-officials

⁹⁰Petrie's *Monumenta*, 469. This 'famous butler' was Alfred's maternal grandfather.

to receive administrative functions were the staller and the chancellor, who seem to have attained their positions at court at almost the same period.

The Anglo-Saxon court of the tenth century resembled in outline that of the Carolingian Franks. The king was his own *major domus*; the functions of the seneschal, the chamberlain and the butler corresponded closely to those of the same officials across the Channel; and the royal chapel had attained a position of considerable influence. But there were also material differences. The marshal was still a servant of low rank and humble position, the chapel had not yet developed into a chancery and no trace can be found of a palatine count. This last official, however, was soon to disappear from the French court, and the chancellorship probably appeared in England before the next century was far advanced. In courtly pomp and display the English king also tried to imitate his Continental brethren. The great number of princes and *ministri* that attended Æthelstan's councils, the splendor of his palatial surroundings, the banquets and the festivals that his courtiers enjoyed, the great retinue that followed him about on his journeys,⁹¹ all these things testify to a magnificence far different from that which characterized the airy lodgings of his famous grandfather, where the wind extinguished the lighted candle on the king's table.⁹²

This sudden change in the character and aspect of the Anglo-Saxon court was doubtless due in great measure to the new policy of dynastic alliances entered upon by King Æthelstan. One of the greatest influences in assimilating the different national courts to a common type is the queen.⁹³ Before the tenth century the Old English kings had nearly always taken wives from among their own people. It is true, Æthelwulf, the son of Egbert, brought a Frankish princess home to Wessex as queen on his return from Rome;⁹⁴ but he died a few years later, and, if Asser's account can be trusted, Judith's popularity and influence at Winchester could not have been great.⁹⁵ Alfred and Edward the

⁹¹See the lives of the saints of that period.

⁹²Petrie's *Monumenta*, 496 (Asser, *Gesta Ælfredi*).

⁹³The reign of Otto II, emperor of Germany, furnishes an excellent illustration of this. The Byzantine influence that came in with his queen grew to be a fact of great importance in the following reign.

⁹⁴*A.-S. Chron.*, 855.

⁹⁵Petrie's *Monumenta*, 472.

Elder married English wives. Æthelstan, it seems, was never married, but his four sisters all found husbands on the Continent: Otto the Great, Hugh, the father of Hugh Capet, Louis the Blind, king of Provence, and Charles the Simple, king of the West Franks, each married a sister of the English king.⁹⁶ Æthelstan's nephew, Louis d'Outremer, spent fourteen years at the Anglo-Saxon court.⁹⁷ It is clear that so many and such close alliances would bring about much communication and many embassies between these allied courts; and the household of the English kings of that period shows unmistakable signs of their influence.

The closing years of the tenth century brought a second wave of Danish invasion, and a few years later an alien dynasty occupied the new English throne. The royal court at Winchester, with its Danish king and his Norse attendants, with the staller-ship as its highest dignity and with its large corps of armed house-carles guarding the royal person and inspiring the subjects with a prudent respect, now took on a decidedly Norse appearance. But the Danish influence did not long remain the dominant one; in less than a generation it had begun to retreat before a new force from across the Channel.

The first of Æthelstan's successors to seek a wife from abroad was the unfortunate Æthelred. In his reign Emma of Normandy, a woman whose influence can be clearly felt but not measured, came across to England as queen. With her came Norman ideas and men⁹⁸ and doubtless also Norman institutions. After her husband's death she became Cnut's consort, and the Normanizing tendency continued.

Edward the Confessor's sojourn in Normandy⁹⁹ is also a fact of the utmost importance: it familiarized him with a court organization and with court usages essentially the same as those of the Capetian household.¹ His own court was, to begin with, far from being purely Anglo-Saxon. It continued the organization of the Anglo-Danish household, retaining, it seems, whatever additions had come in with the Danish dynasty. To these were

⁹⁶Ramsay, *Found. of Eng.*, I, 288.

⁹⁷*Ibid.*, 289. Other royal exiles also found refuge at the court of this genial monarch.

⁹⁸The year following her arrival in England we find mention of one Hugo, a Frenchman whom Emma had appointed reeve at Exeter. *A.-S. Chron.*, 1008.

⁹⁹Twenty-five years. See Ramsay, *Found. of Eng.*, I, 437.

¹Stubbs, *C. H.*, I, 372-73.

added an important Norman-French element, the inevitable result of the king's Norman education. Characteristic of his reign is the rise of the chancery, an institution which no doubt was introduced from Normandy, perhaps in Æthelred's reign. When the Saxon line perished, the English court had, like the Continental courts, five high officials, the chancellor, the staller, the seneschal, the chamberlain and the butler.² It also had huntsmen and falconers, goldsmiths and wagon-makers, marshals and chaplains, butchers and cup-bearers and other inferior servants, such as would be found at almost any royal court at that time. It differed from those across the Channel, however, in possessing an important military element, the house-carles, and in the circle of duties assigned to some of the higher officials. The Capetian court had no *dapifer*, the English no constable. In a general way the seneschal's office in France seems to have corresponded to the English stallership; but the seneschal also had charge of the royal tables, while the staller probably had the additional duties of chief marshal.

That the Anglo-Saxon court was indebted to the royal households of the Continent for much of its institutional growth is doubtless true; but we must remember that England did not do all the borrowing. The Old English court also had its sphere of influence. The royal households in other parts of Britain and in Scandinavia were nearly all organized later than the court of England, and naturally imitated its organization to a great extent.

In the old Welsh laws³ there is an extended body of rules for the government of the king's household, many of which betray Saxon influence. The officials, with perhaps a few exceptions, are such as we should expect to find in any Germanic court of that time;⁴ hence it seems reasonable to assume that their offices

²Cf. Round, *The Officers of Edward the Confessor*: *Eng. Hist. Rev.*, XIX, 90-92.

³*Ancient Laws and Institutes of Wales*, 2 ff. It is, of course, difficult to say how far these laws have been modified since the days of Howel (ca. 940), who is supposed to have collected and in part enacted them. But as some of the terms and titles seem derived from the Anglo-Saxon, the organization of the Welsh court in the form given in the laws most probably antedated the Norman Conquest.

⁴Howel's court had a chief of the household, a priest, a steward, a chief falconer, a judge, a marshal, a chamberlain, a bard, a silentiary, a chief huntsman, a meadbrewer, a mediciner, a doorward, a butler, a cook and a candle-bearer. The queen had a separate service, though fewer servants.

were introduced from some Teutonic nation with which the Welsh had come into close contact. The history of Britain, the contiguity of the Welsh and English territories, as well as some of the titles used, point at once to the Anglo-Saxon court as the prototype of the Cymric. The Welsh heir-apparent is called the *edling* (A.-S. *epeling*); the seneschal is a *dysteyn* (A.-S. *disc-þegn*); the royal meadbrewer is called a *medyt*.⁵ Whether the Welsh kings copied Æthelstan's court, or whether they modified the older Celtic institution by the addition of English elements, I shall not attempt to decide. The latter supposition is, of course, the more probable one.

There are also traces of Saxon influence in the organization of the Norwegian court. The word for household, *hírþ* is evidently the Anglo-Saxon *hired* in Norse form. The term *skutil-sveinn*, table-servant, is probably derived directly from Old English *scutel* (Lat. *scutella*), a dish.⁶ Whether the institution came in with the term cannot be known; I find no reference of any sort to such a table-service in the English sources. But Snorre affirms that the custom of employing such servants was a foreign one,⁷ and it would be strange if the office and the title did not originate at the same court. That the Norwegian kings should have drawn freely on English experience in organizing their households is not to be wondered at. Hakon the Good is said to have spent his childhood and youth at Æthelstan's court.⁸ Olaf Trygvesson was baptized (or confirmed) at Æthelred's court.⁹ Saint Olaf, who first gave the royal household of Norway a definite organization, was at one time a hostage in Æthelred's hall,¹⁰ and, what is more important, when he became king he surrounded himself with English priests.¹¹ Thus the royal chapel was likely to be organized along Saxon lines. In view of the fact that the household priest also acted as the king's treas-

⁵The Welsh word *medd*, mead, may be a native term and not derived from Anglo-Saxon *medu*; but the use of this beverage is so characteristically Teutonic that Old English influence in this matter is very probable.

⁶*Norges gamle Love*, V, Glossary.

⁷*Saga of Olaf the Quiet*, 3.

⁸*Saga of Harold Fairhair*, 40 ff.

⁹*A.-S. Chron.*, 994. Ramsay, *Found. of Eng.*, I, 343.

¹⁰Ramsay, *Found. of Eng.*, I, 368.

¹¹*Adamus*, II, 55: [Olaf] habuit secum multos episcopos et presbyteros ab Anglia, quorum monitu et doctrina ipse cor suum Deo praeeparavit subiectumque populum illis ad regendum commisit. For the organization of St. Olaf's court, see Snorre, *Saga of St. Olaf*, 55.

urer¹² his English origin becomes peculiarly significant; the whole fiscal system of the kingdom seems to have originated in the royal chapel. As a king's chaplain in those days usually meant a future chancellor, we should expect to find traces of English influence in the Norse chancery. And it is interesting to note that in the Norwegian laws of the thirteenth century, the terms *kanceler* and *innsigli*¹³ appear, identical as far as phonetics would permit, with Old English *canceler* and *innsegl*. That *cancellarius* should have developed similar forms in both these idioms is not surprising; but that both should have practically the same word for seal seems rather strange. Such a term might be derived from *sigillum*, *sigillare*, or *insigillare*; *innsegl* and *innsigli* are both from *insigillare*, apparently the least used of the three.¹⁴ There is also a striking similarity between some of the documents emanating from the Norse chancery in the thirteenth century¹⁵ and the Old English writs drawn up by Anglo-Saxon clerks two hundred years before. The charters of the Norwegian kings are usually drawn up in the vulgar idiom and in the form of writs. With the bulls and mandates that regularly arrived from Rome, they have little in common. The formulas used are such as might easily be borrowed from the Confessor's scriptorium. One of King Hakon's grants opens with the following salutation: 'King Hakon Hakon's son sends to Sir Askatl, bishop of Stavanger, N. the archdeacon and all the canons, learned men and landed men,¹⁶ franklins and freeholders, present and future, God's friends and the king's, who may see or hear this letter, God's greetings and his own.'¹⁷ Similar to this, though less elaborate, is the opening sentence of one of Edward's writs: 'King Edward sends to Stigand the archbishop and Ægelmær the bishop and Gyrth the eorl and Toli the shire-reeve, and all his thegns in Norfolk and in Suffolk and all his other wise men (*witan*) throughout all England, learned and lay, friendly greet-

¹²Keyser, *Efterladte Skrifter*, II, 82.

¹³*Norges gamle Love*, V, Glossary.

¹⁴See Du Cange, *Glossarium*.

¹⁵Norse charters dated before 1200 are exceedingly rare.

¹⁶The phrase "*lærðom oc lendom*" means ecclesiastics and tenants on the king's estates.

¹⁷*Diplomatarium Norvegicum*, I, 1, No. 51 (1226-1254): H[akon] konongr son H[akonar] konongs sendir herra A[skatle] biskupe i Stavangre, N, ærkiddi- acne oc ollum korabrdðrum, lærðom oc lendom buandum oc buþægnum, verandum oc viðomandum ollum guðs vinum oc sinum, þeim er þetta bref sia eða höyra, Q. G. oc. sina. Cf. VIII, 1, Nos. 2 (1170-90), 4 (1170-94), 5 (1202).

ings.¹⁸ Hakon's charter also has the attestation stated in the same rather informal fashion that we find so often in the Anglo-Saxon writs of the eleventh century. 'And these are the witnesses to this grant: Margaret the queen,.....John the king's court-priest and many other doughty men, learned and lay.'¹⁹ Compare with this the subscriptions to an English document dated 1044: 'And these are the witnesses: Edward the king, and Ælfgifu the lady....and Ælfwine the red and many men in adition to them, both learned and lay, within burg and without.'²⁰ In both formulas the resemblance is too close to be accidental. The charter referred to is by no means exceptional; and further comparison would no doubt disclose many other points of similarity.²¹

As the Norman kings continued the use of the Old English writs,²² it is possible that this diplomatic form may have come to Norway from the Norman-English chancery. But the probabilities are against this view, as there was very little communication between the Norse and the English court after 1066 compared with what there was before that date. On the other hand we know that the king's chapel in Norway had an Anglo-Saxon origin and that the chaplain acted as royal notary.²³ But even if the Norse chancery did get its formulas from the court of Henry I or of Henry II, their origin would, though indirectly, still be Anglo-Saxon.

The royal court of William the Conqueror was organized on Norman-French lines. The marshal²⁴ took the place of the staller. The chamberlain's fiscal duties were transferred to the

¹⁸*K. O. D.*, No. 858: Eadward cyng gret Stigand ercebiscop, and Ægelmar biscop, and Gyrð eorl. and Toll scirreue, and ealle his þeines inne Norðfolce and inne Suffolce and ealle his oðra witen ofef eall Ænglande, hadede and leawede, freondlice.

¹⁹*Diplomatarium Norvegium*, I, 1, No. 51: En þessir ero vitnis men at þessare glöf. Margretta drotning..... Johan bulsi hirþrestr konungs, oc mærgar aþrer duganda menn, lærðer oc olærðer. Cf. VIII, 1 No. 2 (1170-80).

²⁰*K. O. D.*, No. 778: And þisse is to gewitnesse, eadweard cynge, and ælfgifu seo hlæfdige.....and ælfwine se reada, and mænig man þerto eacan ge gehædude ge lewede, binnan burgan and butan.

²¹Subscriptions are not very common in the Norse charters, as the seal is used instead.

²²See Stevenson, *An Old English Charter: Eng. Hist. Rev.*, XI, 781 ff.

²³Keyser, *Efterladte Skrifter*, II, 82.

²⁴Such is his title in *Domesday*. So far as I know, constabularius is used but once in that document and then as a synonym of staller (I, 151). Stubbs gives the Norman court officials as seneschal, cup-bearer, constable, chamberlain and chancellor. *O. H.*, I, 372-73, 380.

treasurer. But on the whole I believe we are inclined to over-estimate some of the institutional changes that came in with the Conquest. During the reign of Edward the Confessor the English court seems to have become very nearly assimilated to the type that prevailed across the Channel. And the Conqueror doubtless retained many household customs and usages that were distinctly English. The Chronicler in reviewing William's life tells us that 'three times he bore his crown each year as often as he was in England; at Easter he bore it at Winchester, at Pentecost at Westminster and at midwinter at Gloucester.'²⁵ At first sight this looks like something of an innovation: a court held regularly at the three great festivals and at three different places, with much parade and the crown on display. 'And then there were with him,' continues the Chronicler, 'all the mighty men of England, archbishops, bishops, abbots, earls, thegns and knights.' We must be careful, however, not to read too much into this. An examination of the sources dealing with Edward's reign will show that the royal court met in festive gatherings with considerable regularity on the great church festivals in the boroughs of Gloucester and Winchester. Evidently what the Chronicler wishes to emphasize is the fact, that after 1066 these gatherings were more formal and pompous, for the Confessor, we are told, lived very plainly.²⁶

Like his predecessors, Edward moved his court from place to place, but his movements were more systematic than theirs. A satisfactory itinerary for his reign cannot be made out, but we can at least produce a very suggestive outline.²⁷ From this it appears that, so far as we know, the king sojourned principally in three leading cities: Gloucester, Winchester and London. He apparently spent the winter months at Gloucester: we find him

²⁵ *A.-S. Chron.*, 1087.

²⁶ William of Malmesbury, *Gesta Regum*, 271.

²⁷ 1043. Easter, Winchester. *A.-S. Chron.*, [1042], 1043; *Flor. Wig.*, I, 197. Later in the year we find him at Gloucester where he probably intended to spend the winter; but his lords advised him to descend on the queen's treasures at Winchester, which was done, Nov. 16. *Ibid.*

1044. August, gemot at London. *Flor. Wig.*, I, 199.

1045-1050. No satisfactory information. The king is once in London at a gemot and twice at Sandwich with the fleet. *A. S. Chron.*, 1046, 1047; *Flor. Wig.*, I, 199.

1051. September and later, Gloucester. *Flor. Wig.*, I, 205.

1052. London. The king was present at two assemblies, the latter of which seems to have been held in September. By Christmas he was probably back in

there in September, November, December and January.²⁸ The two Easter festivals of which we have any account were celebrated at Winchester; at no other time do we find King Edward in that city, except in November, 1043, when he came to raid his mother's treasury. It also appears that London was the favorite place for holding the national assemblies and that these might be called for any date. William was certainly violating no English precedent when he celebrated Christmas at Gloucester and Easter at Winchester. We hear nothing of a Whitsunday celebration in Edward's time. This may have been instituted by the Conqueror to compensate London for the loss of the many meetings of the *witan*.

These festivals were doubtless in obedience to an ancient custom antedating Christianity and by no means limited to the Angles and Saxons.²⁹ Charters issued on such occasions testify to the character of the assembly that gathered to celebrate with the king. In a life of Saint Oswald, two such banquets are described, the one being an Easter session of the *witenagemot*. 'He himself and all the eminent *primates* and distinguished *duces* and powerful *milites* from all the towns (*castellis*) and strongholds (*oppidis*) and cities and regions, and an infinite multitude came to the king. There came also that prince of bishops, Dun-

Gloucester, for we find him there early in January. *A.-S. Chron.*, [1051], 1052; *Flor. Wig.*, I, 209.

1053. January, Gloucester. *Flor. Wig.*, I, 211. Easter, Winchester. At this festival Godwin died. *Ibid.*; *A.-S. Chron.*, 1053.

1055. Midlent, London. A *witenagemot*. Later in the year the army is gathered about the king at Gloucester. *A.-S. Chron.*, 1055; *Flor. Wig.*, I, 212-13.

1057. Death of Edgar the Etheling at London. Edward was probably there at the time. *A.-S. Chron.*, 1057; *Flor. Wig.*, I, 215.

1062. The king was probably at Gloucester during the winter months. Two papal legates were waiting at Worcester near that city for a reply which the king had promised to give at the Paschal feast. They went to Worcester on Edward's suggestion. *Flor. Wig.*, I, 220.

1063. Christmas, Gloucester. *Ibid.*, 221.

1065. Christmas, Westminster. Dedication of Westminster Abbey. *Ibid.*, 224; *A.-S. Chron.*, 1065.

²⁸The year 1065 is exceptional. Edward's absence from Gloucester finds its explanation in his desire to see the church at Westminster dedicated before death, which he felt was approaching, should take him away.

²⁹The Yule-festival of the northern tribes was celebrated in the middle of January; one of Hakon the Good's first acts in his vain effort to christianise the Norwegians was to move this festival to December 25. Snorre, *Hakon's Saga*, 15. The attempted assassination of Edwin as dated by Bede was on the first day of Easter. *H. E.*, II, 9. Many were present and the gathering has all the appearance of a feast. But the celebration could not have been in honor of

stan with his retinue and also the holy prelate Æthelwold and all the worthies of Albion, all of whom the king received royally, granting them the delights of great joy and blending festivities with merry gladness on that Easter day.³⁰ From the nature of the language used we should conclude that the writer was present at the banquet and had his share of the mixed delights.³¹

As the magnates from all over the realm were present at these gatherings,³² the business of the kingdom would naturally come up for discussion or decision. In other words, they were sessions of the *Witenagemot*.³³ As such they furnished a precedent for the *curia regis* of the Norman kings. Whether there was in Old English times a *curia regis* in the narrower sense, a judicial and administrative body like the one we find in the reign of Henry I and later,³⁴ is a more difficult question. I know of no evidence for an administrative curia before the Conquest. On the judicial side of the question something can be said, but the evidence even for a judicial curia in Saxon times is far from satisfactory. As we have already seen, the early laws imply that there was a considerable exercise of judicial authority at the king's vill.³⁵ We also find that the later kings retained the power of punishing or pardoning offenders in their own households. 'If any one fight in the king's house, he shall forfeit all his property and the king shall determine whether or not he shall have his life.' Such

Easter, as Christianity was not yet a fact in Northumbria. Either Bede must have been in error or there was a heathen festival falling in the early vernal season which the Christian historian has confused with Easter. In 656, Penda the Mercian king, was treacherously slain "in ipso tempore festi paschalis." *Ibid.*, III, 24. It was on the occasion of such a festival that King Oswald ordered the silver dish to be cut up and given to the poor. *Hist. York*, I, 358. For the Germanic festivals see Müllenhoff, *Deutsche Altertumskunde*, IV, 213 ff.

³⁰*Hist. York*, I, 425. (Written in Æthelred's reign.) The second festival is merely alluded to, but all the worthies of the region were present. "Cum esset omnis dignitas hujusce regionis cum rege in Paschali festivitatem contigit . . . ut quidam inclitus miles regis obiret." *Ibid.*, 427.

³¹There was a banquet at Easter in 1043 when Edward was crowned, and there was also much feasting at the Easter celebration at Winchester when Godwin died. See *A.-S. Chron.*, 1043, 1053.

³²On the fourth day of Christmas, 1064, Gospatric, a Northumbrian nobleman, was murdered "in curia regis" by order of the queen, perhaps on Tostig's instigation. The fact that this Northumbrian was present would lead us to infer that the occasion was a general gathering of the aristocracy. *Flor. Wig.*, I, 223.

³³Cf. Stubbs, *C. H.*, I, 138; Kemble, *Sax. in Eng.*, II, 181.

³⁴See Stubbs, *C. H.*, I, 407.

³⁵*Laws of Æthelbriht*, 2; *Laws of Hlotar and Hadric*, 7, 16.

was Ine's law,³⁶ and Alfred's code has a similar chapter.³⁷ The royal authority in this matter is further extended in the laws of Edmund,³⁸ Æthelred³⁹ and Cnut.⁴⁰ In direct line with this is the judicial authority of the *Huskarlesteffne* as described by Svenno. If this gemot was ever a reality in England, as it evidently was, we should look upon it as one of the possible sources of the later *curia regis*.⁴¹ Its jurisdiction was, indeed, limited to the membership of the corps, but that would not prevent it from developing and spreading.⁴² And there are also indications that the king sometimes exercised judicial authority in cases where the litigants were not necessarily members of the royal household.⁴³

It will not do to make any extravagant claims for the Anglo-Saxon *curia* as a part of the national government. If it existed at all as such, it must have been in a rather undeveloped form. All we are justified in affirming is that the principle of curial jurisdiction seems to have been established to some extent, and that the practice of applying the laws in the king's own court was familiar to the nation. It will thus be seen that William the Conqueror could with comparative ease fit his own system into that of the Saxon kings. It may have been radically different in theory, but if it amounted to the same thing in practice there would be no great opposition to its permanent establishment. Perhaps there was, after all, not such a great difference between the system of national administration (if such a term may be used) that the Conqueror found in England and the system that he brought with him from Normandy. In many respects the

³⁶ C. 6.

³⁷ C. 7.

³⁸ II, 4: *Eac ic cyðe, ðæt ic nelle soðne habban to minum hirede ðone, ðe mannes blod geate.*

³⁹ VI, 36: *And gif mordwyrhtan oððe man-sworan oððe æbere man-slagan to ðam geþristian, ðæt hi on ðæs cyninges neaweste gewunian ær ðam ðe hi habban bote agunnen.....ðone plihte hi heora sehton butan hit friðbenan sindan.*

⁴⁰ II, 59: *Gif hwa on cynlincges hirede gefeohte, polige ðæs lifes buton se cynincg him gearhian wylle.*

⁴¹ I find the same conclusion stated in Holberg's work: *Dansk Retslovgivning*, 93.

⁴² Such was actually the case in Denmark. 'Persons who did not belong to the royal household would voluntarily submit their differences to the king's household court for settlement;' and in this way the tribunal of the housecarles developed into a system of popular courts. *Ibid.*

⁴³ See Zinkelsen, Anglo-Saxon Courts of Law: *Political Science Quarterly*, X, 132-35.

Confessor's reign was a transitional one. The palatine organization was rapidly taking on a Norman appearance. English feudalism was coming more and more to resemble the Continental type. Men from across the Channel were influential in directing the policies of the English church. It seems more than probable that the Normans did not introduce so many innovations as has formerly been supposed; that some of the principal changes attributed to them date from the closing years of the Anglo-Saxon period.

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**LINCOLN'S SUSPENSION OF HABEAS CORPUS
AS VIEWED BY CONGRESS**

BY

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LINCOLN'S SUSPENSION OF HABEAS CORPUS.

INTRODUCTION.

The suspension of the privilege of the writ of habeas corpus by President Lincoln in 1861 gave rise to a considerable mass of pamphlets, periodical articles and more ephemeral writings,¹ and to a large number of legal decisions.² In these, considerations of law, history and expediency are marshalled in the main against but to some extent for the claim of the President to suspend under the Constitution. A careful working-over of this material led the writer to the conclusion that the Gordian knot³ of habeas corpus suspension in the United States is extremely difficult if not impossible to untie. Further investigation led to the belief that a detailed historical exposition of the attitude of Congress toward Lincoln's suspension of the privilege of the writ would not only cast light upon the psychology of Congress in war-time, but might show that the knot was cut while the pamphleteers were still at work.

The only possible federal depositories of the power to suspend are Congress and the President. Until 1861 the view that Congress alone could suspend was generally accepted, or

¹ See list of pamphlets, etc., appended to S. G. Fisher's *The Suspension of Habeas Corpus during the War of the Rebellion*, in *Political Science Quarterly*, vol. III, pp. 485-488; Democratic State Platforms, 1861, 1862; *Congressional Globe*, 37th Congress, *passim*.

² See *Law Digests and Habeas Corpus*.

³ Cf. Lieber to Sumner, January 8, 1863: "Every one who maintains that it can be proved with absolute certainty that the framers of the Constitution meant that Congress alone should have the power [to suspend the privilege of the writ] . . . is in error . . . It cannot mathematically be proved from the Constitution itself, or from analogy which does not exist, or from the debates, or history." *Life and Letters of Francis Lieber*, ed. by Perry, 1882, pp. 328-329.

at least was nowhere controverted.⁴ The President's action in 1861 was a practical denial of the correctness of this view. The stand which Congress took on this seeming encroachment upon its hitherto unquestioned jurisdiction manifestly merits careful examination. If Congress acquiesced in Presidential suspension, if, as this essay attempts to demonstrate, it conceded the President's right under the given circumstances to suspend, the historical precedent thus established must be given great weight. It is true that the conditions of the time were abnormal, and true that "acts committed in time of war, under the pressure of necessity and self-preservation, are not likely to ripen into precedents for times of peace."⁵ But federal suspension of the privilege of the writ of habeas corpus cannot constitutionally occur in time of peace; it is a proceeding which, fortunately for the people of the United States, can be resorted to only in most abnormal times. The importance of the decision of Congress in 1861-1863 upon the question of the President's right to suspend is therefore not weakened by the conditions under which the decision was rendered.

*"I had supposed it to be one of those points of constitutional law upon which there was no difference of opinion, and that it was admitted on all hands that the privilege of the Writ could not be suspended, except by act of Congress." Taney, C. J., in *ex parte Merryman*, *Taney's Circuit Court Decisions*, p. 255.

"The better opinion . . . among judges and lawyers and constitutional commentators, surely is that the writ of *habeas corpus* was never intended by the Constitution to be suspended except in pursuance of an act of Congress. The courts have so held, judges have so stated, commentators have so written, and not a commentator can be found, who has written on the Constitution before this rebellion, who ever disputed that proposition. There is great diversity of opinion in the country now." Trumbull, in the Senate, December 9, 1862. *Globe*, 3d. S. 37th Cong. p. 31.

⁴ Lyman Tremain in *N. Y. Daily Tribune*, September 11, 1861.

CHAPTER I.

THE HABEAS CORPUS PROBLEM.

The exclusive right of Congress to suspend the privilege of the writ of habeas corpus¹ was challenged by President Lincoln at the outset of the Civil War. April 27, 1861, apprehensive for the safety of the isolated capital, the President issued an order authorizing General Winfield Scott to suspend the writ of habeas corpus. The order, which practically empowered General Scott to arrest and detain at will,² was as follows: "You are engaged in repressing an insurrection against the laws of the United States. If at any point on or in the vicinity of any military line which is now or which shall be used between the city of Philadelphia and the city of Washington you find resistance which renders it necessary to suspend the writ of *habeas corpus* for the public safety, you personally or through the officer in command at the point where resistance occurs, are authorized to suspend that writ."³

¹The customary phrasing is "suspend the writ of habeas corpus."

²It is still a disputed point in legal theory whether the suspension of the privilege of the writ authorizes arrests. The *obiter dictum* of the Supreme Court, in *ex parte Milligan*, that the suspension "does not authorize the arrest of any one, but simply denies to one arrested the privilege of this writ in order to obtain his liberty," was a flat denial of the correctness of the practice of the Civil War. Four minority justices, however, including Chief Justice Chase, upheld the legality of the practice. See 4 *Wallace*, pp. 115, 137. The President in his message of the extra session, July 4, 1861, said that he had authorized General Scott to suspend the privilege of the writ, or, as he explained, "to arrest and detain, without resort to the ordinary processes and forms of law, such individuals as he might deem dangerous to the public safety." *Works*, vol. II, p. 59. See also the President's letter to Brastus Corning and others, June 12, 1863. *Ibid.* p. 348. See also Seward to Lyons, October 14, 1861. 115 *War Records*, p. 633.

³115 *War Records*, p. 19. The words, "on or in the vicinity of any military line" etc., were a euphemism for "anywhere in Maryland." See, for example, Latham's statement in the Senate, July 20, 1861. *Globe*, 1st S. 37th Cong. Appendix, p. 19.

Hard upon this order came the proclamation of May 10, 1861, in which the President authorized the United States commander on the Florida coast to suspend the writ, commanding him "to permit no person to exercise any office or authority upon the islands of Key West, Tortugas and Santa Rosa which may be inconsistent with the laws and the Constitution of the United States, authorizing him at the same time if he shall find it necessary to suspend there the writ of *habeas corpus* and to remove from the vicinity of the United States fortresses all dangerous or suspected persons."⁴

These are the two authorizations of suspension which were the text for the habeas corpus debates in the first session of the thirty-seventh Congress. It is not necessary to refer specifically to any of the subsequent orders.⁵ The practice which was almost straightway adopted was to dispense with any general order to suspend, and to make extraordinary arrests whenever and wherever necessary, the theory being that such arrests were *ipso facto* suspensions of the writ. Except at the very beginning of the war there was no hard and fast line to be determined by reference to this or that particular order of suspension beyond which the Government could not consistently, or would not, make summary arrests. No one, by virtue of residence in even the most peaceful portions of Union territory, was safe from executive apprehension.

The extra session of Congress began July 4, 1861, and July 5 the message of the President was read in both Houses.⁶ In it he reviewed, among other matters, the measures he had taken to meet the crisis. The relevant portion of the message is as follows: "Recurring to the action of the Government, it may be stated that at first a call was made for seventy-five thousand militia; and rapidly following this a proclamation was issued for closing the ports of the insurrectionary districts by proceedings in the nature of a blockade. So far all was believed to be strictly legal. At this point the insurrectionists announced their purpose to enter upon the practice of privateering.

⁴115 *War Records*, p. 19.

⁵They may be found in the *War Records*.

⁶*Globe*, 1st S. 37th Cong. pp. 11, 13.

"Other calls were made for volunteers to serve for three years, unless sooner discharged, and also for large additions to the regular Army and Navy. These measures, whether strictly legal or not, were ventured upon under what appeared to be a popular demand and a public necessity, trusting then as now that Congress would readily ratify them. It is believed that nothing has been done beyond the constitutional competency of Congress.

"Soon after the first call for militia, it was considered a duty to authorize the commanding general in proper cases, according to his discretion, to suspend the privilege of the writ of *habeas corpus*, or, in other words, to arrest and detain, without resort to the ordinary processes and forms of law, such individuals as he might deem dangerous to the public safety. This authority has purposely been exercised but very sparingly. Nevertheless, the legality and propriety of what has been done under it are questioned, and the attention of the country has been called to the proposition that one who is sworn to 'take care that the laws be faithfully executed' should not himself violate them. Of course some consideration was given to the questions of power and propriety before this matter was acted upon.¹ The whole of the laws which were required to be faithfully executed were being resisted, and failing of execution in nearly one third of the States. Must they be allowed to finally fail of execution, even had it been perfectly clear that by the use of the means necessary to their

¹The subject of *habeas corpus* suspension appears to have been first debated by President and Cabinet when the special session of the Maryland Legislature, called for April 26, was under consideration. It was believed that the Legislature would probably attempt some act of secession. The question was would it not be wise to prevent the meeting of the Legislature. The President decided, after Attorney-General Bates had submitted his legal notes and other Cabinet officers had given their advice, that it would be neither justifiable nor effective to take the proposed action against the Legislature, which had, he said, clearly a legal right to assemble. April 25, he gave his special directions to General Scott: "I therefore conclude that it is only left to the commanding general to watch and await their action, which, if it shall be to arm their people against the United States, he is to adopt the most prompt and efficient means to counteract, even if necessary to the bombardment of their cities, and, in the extremest necessity, the suspension of the writ of *habeas corpus*." *Works*, vol. II, p. 38; Nicolay and Hay, vol. IV, p. 167. No authority was exercised under this order. Such an attitude toward suspension must have seemed strange a few months later.

execution some single law, made in such extreme tenderness of the citizen's liberty, that practically it relieves more of the guilty than of the innocent, should to a very limited extent be violated? To state the question more directly: are all the laws *but one* to go unexecuted, and the Government itself go to pieces, lest that one be violated? Even in such a case, would not the official oath be broken if the Government should be overthrown, when it was believed that disregarding the single law would tend to prevent it? But it was not believed that this question was presented. It was not believed that any law was violated.⁸ The provision of the Constitution that 'the privilege of the writ of *habeas corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it,' is equivalent to a provision—is a provision—that such privilege may be suspended when, in case of rebellion or invasion, the public safety *does* require it. It was decided that we have a case of rebellion, and that the public safety does require the qualified suspension of the privilege of the writ which was authorized to be made. Now, it is insisted that Congress, and not the Executive, is vested with this power. But the Constitution itself is silent as to which or who is to exercise the power; and as the provision was plainly made for a dangerous emergency, it cannot be believed the framers of the instrument intended that in every case the danger should run its course until Congress could be called together; the very assembling of which might be prevented, as was intended in this case, by the rebellion.

"No more extended argument is now offered, as an opinion, at some length, will probably be presented by the Attorney General.⁹ Whether there shall be any legislation upon the subject, and if any, what, is submitted entirely to the better judgment of Congress."¹⁰

The habeas corpus issue was thus placed squarely before Congress by the President himself.

⁸ Note especially the original draft of this portion of the message in Nicolay and Hay, vol. IV, pp. 176-177.

⁹ For this opinion, see 115 *War Records*, pp. 20 ff. The opinion is dated July 5; it was made public July 18, in response to a House resolution. *Globe*, 1st S. 37th Cong. p. 117.

¹⁰ *Works*, vol. II, pp. 59-60.

CHAPTER II.

THE INACTION OF THE EXTRA SESSION.

The President's message was read to the Houses on the afternoon of July 5 at two o'clock.¹ Its contents do not appear to have been made public before that time.² Nevertheless, a most important part of the work of the extra session had already been outlined to the Senate by Senator Henry Wilson of Massachusetts, who had been, in the session of March, 1861, chairman of the Committee on Military Affairs and the Militia—the leading committee in time of war. July 4, even before the Senate was fully organized or the standing committees were appointed, Wilson gave notice that he would the next day ask leave to introduce six bills, the titles of which he read. The first bill was entitled, "A bill to ratify and confirm certain acts of the President for the suppression of insurrection and rebellion." The others made provision for drawing out the military strength of the Union.³ The Senate almost immediately adjourned.

¹*Globe*, 1st. S. 37th Cong. pp. 11, 13; N. Y. *Daily Tribune*, July 6.

²"The President's Message suffers sadly in style and diction from being transmitted to us by telegraph. Some of the more obvious blunders we have been able to correct. . . . Had private copies of the Message been dispatched by mail or express on the evening of the 4th to the President's most trusted agent or friend in each of the great cities, with instructions to deliver them to each daily newspaper only upon notice by telegraph that the reading in Congress had been commenced, his most important document would have appeared in the regular evening editions of yesterday's journals. . . ." Editorial note in N. Y. *Daily Tribune* of July 6, 1861. See also N. Y. *Herald* and N. Y. *Times* of same date.

³The titles of these five bills were: "A bill to authorize the employment of volunteers to aid in enforcing the laws and protecting public property; A bill to increase the present military establishment of the United States; A bill providing for the better organization of the military establishment; A bill to promote the efficiency of the Army; and A bill for the organization of a volunteer militia force, to be called the National Guard of the United States." *Globe*, 1st. S. 37th Cong. p. 2.

The text of all six bills seems to have been available July 4.* "Bill No. 1" was substantially in the following words:

"A Bill to Ratify and Confirm certain acts of the President for the Suppression of Insurrection and Rebellion.

"Whereas, since the adjournment of the last Congress, large combinations of men assuming to act in the name and on behalf of some of the States of the Union, have openly set at defiance the authority and laws of the United States, and have arrayed themselves in hostility against the Government, threatening its overthrow; and whereas, under these exigencies and for the purpose of resisting such combinations and suppressing such insurrection and rebellion and causing the laws of the United States to be executed and preserving the Government, the President has called forth the militia of several states, and large numbers of such militia, in obedience to such call, are now in the service of the United States; therefore

"Be it enacted . . . That all the acts and proceedings of the President in calling into the service of the United States the militia of the several States for the purpose aforesaid, and all acts and proceedings incident thereto; and all acts and proceedings relating to the operations of the military and naval forces of the United States, are hereby approved and confirmed, and the same shall be legal and valid, in all respects as if done under the express authority of Congress previously conferred.

"SEC. 2. And be it further enacted, that in case at any time hereafter, during the recess of Congress, similar exigencies shall arise, by reason of any combination to resist the execution of the laws or to destroy the government of the United States, the President shall have authority to call into the service of the United States such military and naval forces as

*The Washington correspondent of the New York *Herald*, in his letter of July 4, which was published in the issue of July 6—no paper being published July 5—gave all six *in extenso*. A comparison of his texts, so published, with those considerable portions of the bills which appear in the *Congressional Globe*, during the course of the debates upon them, proves the substantial accuracy of the *Herald* correspondent on this occasion.

he may deem necessary to suppress insurrection and rebellion and enforce obedience to the laws of the United States."⁶

July 5 passed without any sign from Senator Wilson. It was the day on which the President's message was read. The following morning he introduced his six bills. The first bill, however, had in the interval become a joint resolution (S. No. 1). The six measures were read twice by title and ordered to be printed."⁶ The joint resolution was in the following words:

"Joint resolution (S. No. 1) to approve and confirm certain acts of the President of the United States, for suppressing insurrection and rebellion."⁷

"Whereas, since the adjournment of Congress, on the 4th day of March last, a formidable insurrection in certain States of this Union has arrayed itself in armed hostility to the government of the United States, constitutionally administered; and whereas the President of the United States did, under the extraordinary exigencies thus presented, exercise certain powers and adopt certain measures for the preservation of this Government—that is to say: First, He did, on the 15th day of April last, issue his proclamation calling upon the several States for seventy-five thousand men to suppress such insurrectionary combinations, and to cause the laws to be faithfully executed. Secondly. He did, on the 19th day of April last, issue a proclamation setting on foot a blockade of the ports within the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana and Texas. Thirdly. He did, on the 27th day of April last, issue a proclamation establishing a blockade of the ports within the States of Virginia and North Carolina. Fourthly, He did, by order of the 27th day of April last, addressed to the Commanding General of the Army of the United States, authorize that officer to suspend the writ of *habeas corpus* at any point on or in the vicinity of any military line between the city of Philadelphia and the city of Washington. Fifthly. He did, on the 3d day of May last, issue a proclamation calling into the service of the United States forty-two thousand and thirty-four volunteers, increas-

⁶N. Y. *Herald*, July 6, 1861. See also Philadelphia *Enquirer*, July 8, 1861. See also preceding footnote.

⁷*Globe*, 1st S. 37th Cong. p. 16.

⁸*Ibid.*

ing the regular Army by the addition of twenty-two thousand seven hundred and fourteen men, and the Navy by an addition of eighteen thousand seamen. Sixthly. He did, on the 10th day of May last, issue a proclamation authorizing the commander of the forces of the United States on the coast of Florida to suspend the writ of *habeas corpus*, if necessary. All of which proclamations and orders have been submitted to this Congress. Now, therefore.

"*Be it resolved . . .* That all of the extraordinary acts, proclamations, and orders, hereinbefore mentioned, be, and the same are hereby, approved and declared to be in all respects legal and valid, to the same intent, and with the same effect as if they had been issued and done under the previous express authority and direction of the Congress of the United States."⁸

The six measures were the same day ordered to be printed, and after the standing committees were appointed they were referred, on Wilson's motion, to the Committee on Military Affairs and the Militia, of which he had been re-appointed chairman.⁹ July 8, Monday, at the very brief open session, Wilson, for the committee, reported the joint resolution without amendment and recommended its passage. He asked for its present consideration but Polk's objection, under the rules, made that impossible.¹⁰

The joint resolution was the response proposed by Wilson to that portion of the President's message, above quoted, in which he submitted certain specified measures to the better judgment of Congress. The message, or the information contained in the message, caused Wilson unobtrusively to transform his "Bill No. 1" into the joint resolution.¹¹ He did not

⁸*Globe*, 1st S. 37th Cong. p. 40.

⁹*Ibid.* pp. 17, 21. The members of the Committee were Wilson, chairman, King, Baker, Lane of Indiana and Lane of Kansas, Republicans, and Rice and Latham, War Democrats. *Ibid.*, p. 17; *Tribune Almanac*, 1861, 1862. For Rice's profession of faith see *Globe*, 1st S. 37th Cong. p. 242; and for his identification of his position with that of Latham, *ibid.* p. 217.

¹⁰*Ibid.* p. 21.

¹¹These conclusions rest upon this foundation: The message was not made public until July 5; there is a close correspondence—amounting to practical identity—between the recital of the extraordinary measures in the message and in the joint resolution; above all, the resolution says: "All of which proclamations and orders have been submitted to this Congress."

withdraw the "bill;" he did not ask leave to introduce the resolution; he obtained leave to introduce the "bill" and introduced the resolution "in pursuance of previous notice."¹²

The most striking change in the resolution is the inclusion of the suspensions of the privilege of the writ of habeas corpus among the extraordinary measures. The absence of these from the "bill" may mean that Wilson did not believe that the President transcended his constitutional powers in suspending the habeas corpus or that Wilson did not consider it within his province, as prospective chairman of the Committee on Military Affairs and the Militia, to include them in a military bill. If the latter is the correct conclusion, then the President's message would seem to have caused Wilson to change his opinion.

A comparison of the enacting clause of the "bill" with the corresponding clause of the resolution reveals another important alteration. The language of the "bill"—"*Be it enacted* . . . That all the acts and proceedings of the President . . . are hereby approved and confirmed, and the same shall be legal and valid, in all respects as if done under the express authority of Congress previously conferred"—is clear. Manifestly this means the *legalization* of that which might otherwise be held to lack a degree of legality. The words of the resolution—"Be it resolved . . . That all the extraordinary acts, proclamations and orders, hereinbefore mentioned, be and the same are hereby, approved and declared to be in all respects legal and valid, to the same intent, and with the same effect, as if they had been issued and done under the previous express authority and direction of the Congress of the United States"—are not clear but equivocal. If the resolution had ended with the word valid, it would have been a declaration of the President's constitutional right to do what he had done; what follows the word valid makes the whole statement obscure and suggests that the resolution was meant to legalize the illegal. It would obviate a dilemma if the resolution might be considered as declaratory of the legality

¹² There is no hint in any of the debates that the resolution was a changing.

of extraordinary acts one, two and three, and as intended to legalize acts four, five and six. But this is not possible; the section commencing "Be it resolved" must be construed as a whole, one way or the other.

The obscurity of this portion of the resolution was fully revealed in the debates upon it. Of the senators who expressed themselves clearly on the question, four were of the opinion that it was a declaration of legality. John Sherman's statement may be given as typical: "I approve the action of the President. I believe the President did right. He did precisely what I would have done if I had been in his place—no more, no less . . . but I cannot here, in my place, under oath, declare that it was strictly legal, and in consonance with the provisions of the Constitution. I shall therefore be compelled to vote against the resolution."¹³

Twelve of the senators, including Wilson, expressed the view that the clause meant legalization of the acts of the President. Howe stated the view explicitly when he said: "The resolution does not affirm that they were legal; that they were sanctioned by the legislative power of the United States; but it declares that they shall be"¹⁴ as legal and valid as if they had had the previous express authority and direction of the Congress of the United States.

"I want to say further, Mr. President, that there may be no sort of mistake about the position I occupy, that my admiration of them is proportioned exactly, mathematically, to the extent that they were violations of the existing law."¹⁵ Wilson, in discussing the resolution, which he said was "plain and simple to the comprehension of every man," asked that "the vote shall be taken on merely legalizing the action of the past."¹⁶

The ambiguity of the final clause of the resolution is es-

¹³*Globe*, 1st S. 37th Cong. p. 393. The three others were Bayard (*ibid.* Appendix, p. 14), Carlisle (*ibid.* p. 339) and Lane of Indiana (*ibid.* pp. 142-143).

¹⁴The resolution does not say "shall be."

¹⁵*Globe*, 1st S. 37th Cong. p. 393.

¹⁶*ibid.* pp. 41, 42. The ten other senators who held this interpretation were: Breckenridge (*ibid.* p. 142.), Clark (*ibid.* p. 41), Fessenden (*ibid.* p. 46), Hale (*ibid.* p. 41), King (*ibid.* p. 46), Morrill (*ibid.* p. 392), Pearce (*ibid.* p. 335), Polk (*ibid.* p. 47), Powell (*ibid.* p. 68) and Trumbull (*ibid.* p. 392). In

tablished out of the mouths of United States senators.¹⁷ It is difficult to avoid connecting the ambiguity with the presence in the joint resolution of the sections reciting the President's suspension of the habeas corpus. The ambiguity and the suspension entered the resolution together; they may be said to have left it together. For when, toward the close of the extra session, the fate of the resolution was sealed and Wilson re-introduced his old "Bill No. 1" in a new form, its enacting clause was again unequivocal. As has been shown, the ambiguity served in a way to support or leave standing the President's claim constitutionally to suspend the privilege of the writ of habeas corpus. In view of subsequent cases of a similar nature, it is difficult to avoid the suspicion that the ambiguity was designed for this very purpose.

The prospects of the joint resolution were good. It was the first measure presented to the Senate. It was given precedence over the five military bills which were the basis of the work of the Senate for the session. It was introduced by the leading Republican, the chairman of the leading committee. It was reported favorably by this committee, July 8, without amendment and with only one mildly dissenting voice.¹⁸ July 10—the earliest possible day¹⁹—the resolution came before the Senate as the first business on the calendar. The speeches of that day showed a determination on the part of Wilson and his supporters to hurry the resolution through.

most cases several references might be given, but these are the clearest. Trumbull wavered somewhat in expressing himself on the point, but the context, p. 392, justifies his inclusion here.

Eight senators construed the resolution as a declaration of commendation—waiving, to all intents, the question whether it was meant to legalize or assert legality. These were: Browning (*ibid.* p. 188), Johnson (*ibid.* pp. 289-290), Kennedy (*ibid.* p. 42), Latham (*ibid.* Appendix, p. 19), McDougall (*ibid.* p. 340), Saulsbury (*ibid.* p. 442) and Thomson (*ibid.* p. 395).

¹⁷ August 6, 1861, the last day of the session, when the resolution had no chance of passing, and when it was no longer possible to amend it, Wilson offered to change the last clause to read, "Be, and the same are hereby, approved, and in all respects legalized and made valid," adding significantly, "I believe this expresses the idea more fully and more completely. *Globe*, 1st S. 37th Cong. p. 452 and *passim*."

¹⁸ Latham's. *ibid.* p. 41.

¹⁹ The resolution had to lie over from July 8 to July 9, under the rules. July 9 was devoted to eulogies of the late Senator Douglas.

Despatch breathes through their words as reported in the *Globe*, and the imminence of the passage of the resolution was recognized on all sides.²⁰ The resolution was amended by the addition of the words, "provided that nothing herein contained shall be construed as authorizing a permanent increase of the Army or Navy," Latham's motion to strike out the sections relating to habeas corpus was rejected, and the resolution was read a third time and placed upon its passage.²¹ At this point Polk intervened with a demand for the yeas and nays, and these granted, he made a speech against the resolution.²² After talking at considerable length he expressed a wish to conclude his speech the following day, and in this was supported by Powell, but the Senate refused to adjourn. Polk therefore resumed the floor, whereupon Wilson, after consultation with one or two senators, announced his will: "I propose to let this resolution go over until to-morrow morning, with the understanding that we shall now take up the volunteer bill." This proposition was at once agreed to.²³

July 11 the resolution almost monopolized the attention of the Senate. Polk concluded his speech, at length, and Powell continued in the same strain, at greater length.²⁴ When the latter had ended Breckinridge and Bayard indicated their intention to continue the debate for the opposition, and again Wilson gave the word, with apparently increasing willingness: "I propose, if the Senators desire to speak on this question—and I suppose they do—to let the pending resolu-

²⁰ Kennedy, Unionist, opened his remarks by saying: "Mr. President, I desire to say one word before the vote is taken on this extraordinary measure." *Globe*, 1st S. 37th Cong. p. 42. King, Republican, said, apropos of an amendment: "I offered this proposition without any intention to delay the Senate five minutes . . . However I will not continue this debate so as to protract the time; I prefer voting." *Ibid.* pp. 42-43. Wilson, in opposing Polk's request for one day's postponement, remarked: "I hope, therefore, that the Senator will not ask us to lay this resolution aside at this time, and I hope that the Senate will continue the consideration of it until it is ready to vote upon it." *Ibid.* p. 41. And see other similar expressions, *ibid.* pp. 41-43. Lord Lyons, the British ambassador, wrote Lord Russell, July 14: "It is thought that the Resolution will pass both Houses without any material alteration." *North America No. 1* [British Blue Book], presented to Parliament 1862, p. 57.

²¹ *Globe*, 1st S. 37th Cong. p. 47.

²² *Ibid.* pp. 47-49.

²³ *Ibid.* pp. 49-50.

²⁴ *Globe*, 1st S. 37th Cong. p. 71.

tion go over until to-morrow, and we can go on to-day with another bill containing practical measures." The Senate agreed.²⁵

July 12 passed without a reference to the resolution. July 13 no word was spoken concerning it. July 15, Monday, it was Breckinridge, the leading Democrat, and not Wilson, the Republican, who broke the silence with a request to have the resolution taken up and made the special order for the next day.²⁶ Thereafter the discussion of the resolution continued, but in a desultory fashion, long speeches being made from time to time, without haste or compression.²⁷ It was obvious that the Republicans were, by this time, in no hurry to pass the resolution.

July 17, 1861, Trumbull furnished fresh fuel for the debate by introducing a bill authorizing the suspension of the habeas corpus. Some such measure he regarded as a necessary complement to the resolution. "I am not disposed," he said, a few days later, "to say that the Administration has unlimited power and can do what it pleases after Congress meets. I am willing to excuse it . . . and to sustain it . . . but if you propose to pass a resolution approving the exercise of powers for which you may be unable to find in strict law the warrant and then refuse to grant by law the authority to do what is necessary to be done, it seems to me it will be a very strange proceeding. I think we had better let this resolution lie until we dispose of the bill. . . ." ²⁸

Trumbull's bill was referred to the Judiciary Committee, of which he was chairman, and was ordered to be printed.²⁹ July 26 the committee reported it with an amendment in the

²⁵ *Globe*, 1st S. 37th Cong. p. 71.

²⁶ *Ibid.* p. 127.

²⁷ Johnson, Tennessee, got successive postponements from July 20 to July 27, and during the interval the debate was at a standstill. *Ibid.* pp. 217, 220, 237, 276. July 26 he said: "If the Senate is anxious to have action upon it [the resolution] at once, I have no objection to their taking a vote upon it now, and what little I have to say I can say upon some other proposition." The *Globe* at this point reads: "Several Senators. We have no objection to its going over." *Ibid.* p. 276.

²⁸ *Ibid.* p. 392.

²⁹ *Ibid.* p. 167.

form of a substitute bill (S. No. 33).²⁰ This bill authorized the Commanding General and the commanders of military departments and districts "within their several commands and within States, Territories or districts of country which may have been, or shall hereafter be declared by the President of the United States to be in a state of insurrection, or in actual rebellion" to declare by proclamation such territory or any part thereof "in a state of insurrection and war." Section 4 suspended the operation of the writ of habeas corpus within such territory: "That from and after the publication of the proclamation heretofore mentioned, the operation of the writ of *habeas corpus* shall be so far suspended that no military officer shall be compelled to return the body of any person or persons detained by him by military authority; but upon the certificate, under oath, by the officer having charge of any one so detained, that such person is detained by him as a prisoner under military authority, further proceedings, under the writ of *habeas corpus*, shall be dismissed by the judge or court having issued the said writ." Section 8 empowered the military commander over such territory to administer a specified oath of allegiance to persons suspected of disloyalty. Refusal to take such oath should involve the detention of the suspected persons as prisoners "until the restoration of quiet and peace in the locality where such arrests" had been made, and anyone taking the oath who should afterwards be found in arms against the Government or aiding and abetting its enemies should be liable to the punishment of death at the hands of a court-martial. Section 10 directed the Commanding General or departmental or district commander to recall, publicly, the declaration of the state of insurrection and war, whenever the necessity therefor had ceased. The other sections made provision for the government of such territory and for the conduct of the army therein.²¹

This bill was manifestly of much potential import. It would apply to troubled Union territory, and to territory recon-

²⁰*Globe*, 1st S. 37th Cong., p. 275.

²¹ "A bill to suppress insurrection and sedition and for other purposes." *Ibid.* pp. 336-337.

quered from the Confederates. It was the latter aspect of the measure which secured most attention and most favor for the bill in the Senate.³² But it was also recognized that the bill would be applicable to sections of the Union untouched by war. Breckinridge, whose zeal in opposition was marked, declared it a bill "which abolishes, in the discretion of the Executive and of his military subordinates, not only the right to the writ of *habeas corpus* and the right of trial by jury before civil tribunals for crimes committed by citizens, but it absolutely abolishes, at his discretion, all State governments, all the judicial, executive, and legislative functions of State governments, and authorizes subordinate military commanders to substitute rules and regulations at their will for the laws of the different Commonwealths of this Union, and practically would operate as hardly upon the non-seceded as upon the seceded States."³³ Trumbull, in immediate reply, said: "The Senator from Kentucky thinks that this bill allows the military authorities great power to arrest men. Are they not arrested now? Are not men arrested in the city of Baltimore and already in confinement? . . . Are they not arrested in my State?"³⁴

The bill, coming up for discussion for the first time July 30, had little chance in the Senate. It was imperfect. Trumbull admitted the fact, although he asserted that it was the duty of the Senate to perfect the bill, inasmuch as the Legislature should enable the military authorities to do lawfully that which was needful to the suppression of the rebellion.³⁵ Others said that the bill was too important to be rushed through hurriedly.³⁶ The members of the Judiciary Committee were of every shade of opinion,³⁷ as were the senators as a whole. On a test vote, taken August 2, Bill No. 33 had to

³²*Globe*, 1st S. 37th Cong. pp. 337-393, especially 372, 373.

³³*Ibid.* p. 372.

³⁴*Ibid.* p. 373.

³⁵*Ibid.*

³⁶Harris, for example. He summed up by alleging that the temper of the Senate and the temperature of the weather were against it. *Ibid.* p. 372.

³⁷The members were Trumbull, Foster, Ten Eyck, Cowan, Harris, Bayard, and Powell. *Senate Journal*, 1st S. 37th Cong. p. 21.

give way to the joint resolution, 28 votes to 11. It was obvious that the bill was disposed of for the session.³⁸

It was soon made manifest that the victory of the joint resolution was an empty one, and that its chance of success was also gone. Immediately after the defeat of the bill Doolittle moved to refer the resolution to the Judiciary Committee.³⁹ The Democrats, who had for days been exhibiting marked solicitude for the welfare of the resolution, recognized the significance of Doolittle's motion and Breckinridge taunted the Republicans with wishing to consign the resolution to the dungeons of a committee room.⁴⁰ The Senate rejected Doolittle's motion by a vote of 23 to 17. Analysis of the vote shows that it was the Democrats who kept the resolution before the Senate.⁴¹ They had divined the divided counsels of the majority. The resolution was debated further the same day but was presently pushed aside for other business and finally on Wilson's motion the Senate went into executive session.⁴²

Monday, August 5,⁴³ Wilson introduced a bill to legalize a portion of the measures enumerated in the joint resolution. This is obviously the first part of "Bill No. 1" in a new garb. The bill was as follows: "*Be it enacted, &c.*, That all the acts, proclamations, and orders of the President of the United States, after the 4th of March, 1861, respecting the Army and Navy of the United States, and calling out, or relating to the militia or volunteers from the States, are hereby approved, and in all respects legalized and made valid, to the same intent and with the same effect as if they had been [issued and] done under the previous express authority and direction of

³⁸*Globe*, 1st S. 37th Cong. p. 393. The yeas and nays show that not one Democrat and that only two members of the Judiciary Committee, stood by Trumbull on this vote. *Ibid.*

³⁹*Ibid.*

⁴⁰For this and other jibes, see *ibid.* pp. 392, 393, 452.

⁴¹Only two of the 17 were Democrats and these were War Democrats; eight of the 23 were out-and-out Democrats, one was a War Democrat and two were Unionists. *Ibid.* p. 393.

⁴²*Ibid.* p. 406.

⁴³No mention of the joint resolution, August 3.

the Congress of the United States."⁴⁴ Considerations of Senate procedure made it advisable to tack this measure to a bill increasing the pay of the troops, and the amended bill passed the Senate by a vote of 37 to 5.⁴⁵ In the House, a motion to strike out this amendment failed by a vote of 19 to 74.⁴⁶ The bill (S. No. 72) approved by the President, August 6, contains this legalizing section in the words in which it was presented by Wilson.⁴⁷

The legalizing section was framed, it was said, to meet the technical objections of three-year volunteers who saw a loophole of escape from the army in the circumstance that the President had exceeded his authority in calling them into the service of the United States.⁴⁸ But it will be seen that the phraseology of the section was such that it might be used to cover more than the special difficulty. It could and did serve as the basis for general assertions that Congress approved the extraordinary acts of the President. "Both Houses," said the *New York Daily Tribune* of August 6, "yesterday passed resolves formally approving the acts of the President for the salvation of the Republic. Good." In a similar vein Senator Grimes wrote to an Iowa correspondent who was alive to the importance of the point as a campaign issue: "This section ratifies and confirms, to the fullest possible extent, all the acts of the President that needed or that were susceptible of ratification. . . . So far as I am informed, I believe it was all the confirmation of the acts of the President that he either expected or desired."⁴⁹

The passage of this legalizing amendment was on the face of things an act of salvage upon the wrecked joint resolu-

⁴⁴*Globe*, 1st S. 37th Cong. p. 442.

⁴⁵*Ibid.* pp. 442-443.

⁴⁶*Ibid.* p. 449.

⁴⁷See section 3 of Chapter LXIII of the Acts of the 37th Congress. The amended bill (S. No. 69) after passing both Houses was laid upon the Senate's table and a new bill (S. No. 72) was substituted, amended and passed in both Houses and finally received the President's signature.

⁴⁸See Fessenden's explanation, *Globe*, 1st S. 37th Cong. p. 442.

⁴⁹Salter's *Grimes*, pp. 150-152. Letter referred to in Rhodes, vol. III, p. 439.

tion.⁵⁰ Nevertheless Wilson announced shortly after the opening of the Senate, August 6, that he proposed to take up the joint resolution and wanted it brought to a vote.⁵¹ Whatever his motives, whatever his expectations of success, he did, on the last day of the session, make a gallant effort to get a final vote upon it. He offered to remove all ambiguity from the enacting clause;⁵² he offered to modify the section on the blockades. It was all in vain. The effort served merely to enable leading Republicans to exhibit a belated and suspicious enthusiasm for a measure which had no chance of passing at the eleventh hour, to show the confidence of the Democrats that the Republicans would not allow it to come to a vote, and to give each party an opportunity to throw upon the other the responsibility for its failure.⁵³ There was a touch of poetic vengeance in the final supersession of the resolution, for it was Trumbull, the virtual author of Bill No. 33, who stood in the way—however needlessly—at the very end, and refused to allow the resolution to come to a vote.⁵⁴

The responsibility for the failure of the resolution to pass the Senate must be laid at the door of the Republican majority. If they had continued of the same mind they were July 10, the ambiguity of the enacting clause would not have been a stumbling block.⁵⁵ The ambiguity was pointed out

⁵⁰Sherman said, August 5: "I am very glad this proposition has come up in this way, and I take it as a matter of course, that if this bill is passed, the other joint resolution will not be called up." *Globe*, 1st S. 37th Cong. p. 442. See also Saulsbury's statement, *ibid.* Certainly, if the joint resolution meant *legislation* and were to become law, this legalising amendment would be supererogatory.

⁵¹*Ibid.* p. 451. And see his response to Breckinridge's jibe, *ibid.* p. 442.

⁵²See above, p. 229, footnote.

⁵³*Globe*, 1st S. 37th Cong. pp. 451-453.

⁵⁴*Ibid.* p. 453.

⁵⁵The ambiguity of the enacting clause served as a good excuse for senators who felt it necessary, at a later time, to justify the failure of the resolution. Senator Grimes wrote, in his letter of September 16, 1861: "There may be some who honestly believe that the Senate refused to support the President because of their failure to pass certain resolutions presented by Mr. Wilson, of Massachusetts. The facts in regard to those resolutions were these: They were introduced at an early day in the session, and were put aside from day to day to make room for what was considered more important business, until just at the close of the session, when they had reached that stage in parliamentary proceedings when it was impossible to amend them without parliamentary consent, and that could not be obtained. The objection urged by some gentlemen against them as they stood without amendment was, that they were

at an early day, and yet no motion to remove it was ever made in the Senate until the last day of the session, when the rules of the Senate required unanimous consent. That of itself, considering that the resolution was in the control of the majority for weeks, demonstrates almost conclusively that the Republicans in the Senate had lost interest either in legalizing, or recognizing the legality of, the President's suspension of the habeas corpus.

The change of attitude toward the resolution on the part of the supporters of the Administration took place immediately after July 10. It came so swiftly that it is difficult to escape the impression that the *volte face* was due to sudden and powerful pressure. In the absence of any direct evidence of the employment of this pressure it is safe to fall back upon the general and obvious conclusion that the Republican senators and their allies while as a whole approving of the suspension by the President were unwilling to place themselves

improperly drawn . . . and declared that the acts of the President were legal and valid when performed, whereas as they insisted, they ought to have declared that those acts *should* be legal and valid as though done under the sanction of law.

"It was simply on account of this objection in the minds of a few Senators that the resolutions which it was impossible to amend were dropped, and the substance of them incorporated into a law . . ." Salter's *Grimes*, pp. 150-152.

John Sherman, in a letter to the Cincinnati Gazette, printed in the New York *Daily Tribune* of August 23, 1861, elaborated the same idea. "It is true I did not vote for Senator Wilson's resolution. No vote by yeas and nays was taken upon it. I would have voted against it, and I am well satisfied a majority of the Republican Senators would have voted likewise. But it was not for the reason you state. All the Republican and several of the Democratic Senators cordially approved and justified the acts of the President in Baltimore, and so declared and voted.

"Senator Wilson's resolution declared that the President's orders increasing the regular army and suspending the writ of *habeas corpus* were legal and valid; in other words, were among the powers delegated to the President by the Constitution . . . The legal power to suspend the writ of *habeas corpus* has been recently claimed for the President. . . . While I approved and justified the acts of the President, I could not say with Senator Wilson that they were strictly legal or within the delegated powers. There are times when our Executive officer must anticipate the action of Congress, but in such a case he assumes the hazard of a 'Bill of Impeachment,' or a 'Bill of Indemnity.' The President merely assumed this hazard, and in the vacancy of Congress wisely assumed a power not delegated to him by the Constitution. He places his own justification in his message on the ground of public necessity, and on this ground his acts have been approved, justified and legalized by Congress." Note again the use made of section 3 of chapter LXIII.

formally upon record as authorizing it or as declaring its legality. The former course might have embarrassed the Executive;⁵⁶ the latter, themselves.⁵⁷

It would indeed be worth while to determine just why Congress, in the extra session, took no action on the habeas corpus question. The important thing, however, is established—that it took no action. The President had suspended the privilege of the writ on his own authority; he had asserted his constitutional right, under the given circumstances, so to do; he had, nevertheless, in deference to the older interpretation of the habeas corpus clause of the Constitution, submitted the question of the expediency of congressional action to the “better judgment of Congress.” Congress, at the ideal time for asserting its rights, refrained from interfering and left the President’s claim unchallenged. Another question suggests itself: How long must Congress acquiesce in order to perfect the President’s title to suspend?⁵⁸

⁵⁶The Grimes letter puts it in this way: “It must be apparent, I think, to everyone who will reflect upon the subject, that to have attempted such confirmation [i. e., to have passed the resolution] would be to inferentially admit that, as commander-in-chief of the Army and Navy of the United States, the President had no power to suspend the operation of that writ without congressional authority. Very few, if any, loyal members of Congress were willing to admit that. They did not doubt but that he had complete power in the premises, and they chose to leave him to exercise his authority under the constitution according to his own judgment. *Loc. cit.* Cf. the equally emphatic opposite view of Sherman, above, p. 237, footnote.

⁵⁷Breckinridge, for example, said, August 2: “My deliberate judgment is, that in some mode the Senate will avoid putting itself on record in favor of the principles contained in this resolution. . . .” *Globe*, 1st S. 37th Cong. p. 392. Doolittle denied any intention “to recoil from the responsibility of approving the acts of the Administration.” *Ibid.*, p. 452.

⁵⁸Lord John Russell, an acute observer, was interrogated in the House of Lords, February 10, 1862, on the subject of the political arrests in the United States. In his interesting reply, he said, *inter alia*: “The question itself was brought before Congress and a resolution was proposed that there should be no arbitrary arrests except with the sanction of Congress. But it was contended that it was part of the prerogative of the President, and a large majority decided that the question should not be discussed and thereby left the President to act for himself.” See the whole extract from the proceedings of the British Parliament, 115 *War Records*, pp. 213-216.

CHAPTER III.

THE INACTION OF THE SECOND SESSION.

The unwillingness displayed by Congress in the extra session to take positive action on the vexed problem of habeas corpus continued throughout the ensuing long session. There was not more than a tithe of the interest shown in the summer of 1861, and the only bill which saw the light under auspices at all favorable was kept back from consideration of either House until July 7, 1862, when the end of the session was in plain view.¹

This bill (House No. 362) was framed by the House Committee on the Judiciary. March 13, 1862, Mr. May, for the committee, reported "a bill to provide for the discharge of

¹The *habeas corpus* material of the session, outside of the bill in question, is slight. In the House Pendleton offered a resolution, December 10, declaring that Congress alone has power to suspend. It was laid on the table, 108 to 26. *Globe*, 2d S. 37th Cong. pp. 40-45. Vallandigham, December 23, introduced a personal liberty bill, to imprison the President for two years should he make any more arbitrary arrests. It was referred to the Judiciary Committee and slept the long sleep. *Ibid.* pp. 167, 2070. In the Senate Trumbull offered a resolution, December 12, asking the Secretary of State to report, *inter alia*, under what law he made arrests in loyal States. The resolution was referred, against Trumbull's will, to the Judiciary Committee. *Ibid.* pp. 60, 90-98. Senator King's resolution of December 23 favoring the prosecution of State prisoners in the courts went without debate to the same committee. *Ibid.* pp. 161, 175. Powell's resolution of April 21, 1862, asking detailed information concerning Kentucky arrests met considerable opposition, but after its language had been made very respectful it was allowed to go through. *Ibid.* pp. 1732, 2113, 2393 and *passim*. January 21, 1862. Bill No. 83 of the extra session was taken up and recommitted to the Judiciary Committee. *Ibid.* pp. 115, 409. May 5 Carlisle introduced a bill to regulate arbitrary arrests. It went promptly to the same committee. *Ibid.* p. 1935. July 12 the Judiciary Committee reported back the King and Trumbull resolutions and was discharged. *Ibid.* p. 3271. July 11 and 12 it reported back Bill No. 33 and Carlisle's bill and recommended their indefinite postponement. *Ibid.* pp. 3245, 3271. (On the latter date the committee reported back House Bill No. 362 favorably.) Shellabarger's long speech of May 12, in House Committee of the Whole, defending suspension by the President, completes the catalogue. *Ibid.* pp. 2069-2074.

State prisoners and others, and to authorize judges of the United States courts to take bail or recognizances to secure the trial of the same; which was read a first and second time, recommitted to the Committee on the Judiciary, and ordered to be printed.² July 7, 1862, the committee, through Bingham, reported with amendments the bill it had originally reported almost three months before.³ The first section of the amended bill provided for the discharge on terms, by the federal courts, of political prisoners who should not have been indicted or presented by a grand jury attending said courts; the second section required the courts to discharge upon bail or recognizance political prisoners who should have been indicted or presented as aforesaid, provided that the laws entitled them to liberation on bail or recognizance. The third section of the amended bill was new;⁴ the original bill contained no such provision. It was as follows:

"SEC. 3. *And be it further enacted*, That it is, and shall be lawful for the President of the United States, whenever, in his judgment by reason of 'rebellion or invasion the public safety may require it,' to suspend, by proclamation, the privilege of the writ of *habeas corpus* throughout the United States or in any part thereof, and whenever the said writ shall be suspended as aforesaid, it shall be unlawful for any of the judges of the several courts of the United States, or of any State, to allow said writ, anything in this or any other act to the contrary notwithstanding."⁵

Once again there is to be noted the curious ambiguity. This time it was the deliberate work of the House Judiciary Committee. What is the meaning of "is and shall be lawful?" Does the section declare that the President has the right or does it give him the right to suspend? Bingham, who was surely in a position to know, said it was "very easy of comprehension." "I ask," he continued, "the gentleman to consider that the amendment is in the very words of the Constitution itself."⁶ That, however, was hardly a guarantee of

²*Globe*, 2d S. 37th Cong., p. 1228.

³*Ibid.* p. 3105.

⁴See Bingham's statement. *Ibid.* p. 3106.

⁵For whole bill see *ibid.* pp. 3105-3106, and below, pp. 268-270.

⁶*Ibid.* p. 3106.

clarity. July 8 Biddle attacked the problem of interpretation by intimating that he desired the section amended so as to read, "That it may and shall be lawful for the President of the United States whenever, in his judgment, by reason of rebellion or invasion the public safety may require it, to suspend by proclamation, for the period of twelve months, or until the next meeting of Congress, the privilege of the writ of *habeas corpus* in any of the United States, or in any part thereof, wherein the laws of the United States are by force opposed, and the execution thereof obstructed." Bingham's response was still evasive: "The gentleman strangely misconceives this bill if he supposes there is anything in this legislation which puts it out of the power of the Congress of the United States, within twelve months after such proclamation may be made, to put an end to the law itself. The bill, as it now stands, impliedly and expressly upon its face, is a declaration that this whole matter, in so far as it can be effected by legislation, is in the power of the Representatives of the people. . . ."⁸ Biddle had finally to out with it. "Up to the present time there has been a pretension made in behalf of executive power that the President alone has the right arbitrarily to imprison any American citizen. . . . this bill itself, I am happy to see, denies that right."⁹ Bingham allowed this assertion to pass unchallenged, but the question of interpretation would not down. In a few minutes Colfax said: "If by voting for this bill we imply that the President had not the power, for the salvation of the country, to suspend the writ of *habeas corpus*, I will not vote for it. . . . I will not vote for any bill which indirectly assumes that he has not the power."¹⁰ Bingham answered, at once: "The gentleman from Indiana may quiet his fears. . . . The bill, neither directly nor indirectly, implies any such thing. As I said before, by the common judgment of everybody who has spoken on this question, the bill can do no harm if Congress has no power to meddle with the matter at all; if it has, it

⁸*Globe*, 2d S. 37th Cong. p. 3183.

⁹*Ibid.*

¹⁰*Ibid.*

¹¹*Ibid.* p. 3184.

covers the Executive as with a shield. That is all there is of it. I call the previous question."¹¹ It is not necessary to push further, in this chapter, the question of interpretation in the House. Bingham, who was, if anyone was, in a position to know the mind of the Judiciary Committee, admitted that the bill neither directly nor indirectly implied that the President had not the power, for the salvation of the country, to suspend the writ of habeas corpus. A motion to lay the bill on the table was defeated, 89 to 29.¹² The bill was thereupon passed, without any record of the yeas and nays.¹³

The Senate received the bill from the House July 8, 1862, and referred it to the Judiciary Committee.¹⁴ July 12 Trumbull, for the committee, reported it without amendment¹⁵ and with a recommendation that it be passed.¹⁶ The greater portion of the brief debate upon the bill—reported in what would amount to about five pages of the *Globe*—was devoted to the first two sections, and these provoked lively opposition, being construed by many to mean, as Wilson put it, "a jail delivery of traitors."¹⁷ July 16 Wilson moved, in Committee of the Whole, to strike out these sections. The motion failed by the narrow vote of 18 to 19, and of the 19 only seven were Republicans.¹⁸ The temper of the Republicans was clearly ominous.

The debate on the third section of the bill was brief but significant. Wilson interpreted the section as bestowing on the President congressional authority to suspend. "The third section of the bill, authorizing the President of the United States to suspend the writ of *habeas corpus*, I think very well, and am very willing to vote for it. . . ." ¹⁹ Trumbull,²⁰ Sumner²¹ and Foster²² interpreted the section in the same

¹¹ *Globe*, 2d S. 37th Cong. p. 3189.

¹² *Ibid.* Colfax voted with the minority.

¹³ *Ibid.* For text see below, pp. 268-270.

¹⁴ *Ibid.* p. 3178.

¹⁵ *Globe*, 2d S. 37th Cong. p. 3178.

¹⁶ *Ibid.* p. 3360.

¹⁷ *Ibid.* p. 3359.

¹⁸ *Ibid.* p. 3384.

¹⁹ *Ibid.* p. 3360.

²⁰ *Ibid.* p. 3385.

²¹ *Ibid.*

²² *Ibid.* p. 3361.

way. Henderson's adherence to this construction was less emphatic: "The third section of the bill, as I understand it, if there is anything in it, simply assumes the power in Congress to suspend the privilege of the writ of *habeas corpus*."²² Howe took the other view. In speaking of the first section he said: "This proceeds on the assumption that the Government has exercised no power with which it is not clothed, that it has only exerted power with which it is clothed, and this is to clothe the judicial department of the Government with power which it does not now possess, to order the discharge of these persons. . . . This bill, in the first section, assuming that the prisoner is rightfully confined, and therefore that he has no right to the writ of *habeas corpus*, provides that he may apply to the court for an order, and not for a writ. . . ."²³ The peculiar language of the third section did not escape him. "In the very same bill," he said, "in which you are trying to discharge prisoners by an order, you declare that it is the right of the President already, and shall continue to be his right, to suspend the writ of *habeas corpus*. You do not propose to confer that power upon him, but to recognize it as his. . . . Now what is the meaning of the whole bill? . . . Is not that the effect of the whole act [bill], acknowledging the right of the President to suspend the writ of *habeas corpus*, which is the time-long remedy for persons restrained of their freedom contrary to law, and creating a new remedy which will discharge the prisoner in spite of the suspension of the writ of *habeas corpus*. . . . Now it does seem to me that either you ought to strike out the first two sections or the last."²⁴ Howe's argument is, as a whole, worthy of consideration.

Cowan proposed a number of amendments to the third section which have a direct bearing on the fundamental problem. These amendments, agreed to in Committee of the Whole, caused the section to assume this form: "That it is and shall be lawful for the President of the United States whenever,

²² *Globe*, 2d S. 37th Cong. p. 3386.

²³ *Ibid.* pp. 3361-3362.

²⁴ *Ibid.* p. 3362.

(Congress not being in session,) in his judgment, by reason of 'rebellion or invasion the public safety may require it,' to suspend by proclamation the privileges of the writ of *habeas corpus* in all cases of political offences throughout the United States or in any part thereof, until the meeting of Congress thereafter; and whenever and wherever the said writ, &c."²⁶ Howe demanded the yeas and nays, in the Senate, on the amendment inserting the words "Congress not being in session," and in reiterating his interpretation of the section remarked: "The third section, as it stands in the bill, affirms what I believe to be the law of the land, that it is lawful for the President of the United States, whenever, in his judgment, by reason of rebellion or invasion, the public safety may require it, to suspend the writ of *habeas corpus*. The effect of these amendments, taken altogether, is to declare that that may be lawful for the President, in a certain contingency, that is to say in the absence of the Congress of the United States. . . ." ²⁷ The amendment was concurred in by a vote of 33 to 5.²⁸ This vote cannot, of course, be regarded as a definite expression of the sentiment of the Senate, for opponents of the bill might well, and doubtless did, vote for the amendment in order to expedite the destruction of the bill.

The Senate concurred in all Howe's amendments to the third section. Other amendments designed to perfect the bill or nullify it were offered, and debate was begun upon them when Chandler intervened with a very long speech on military mismanagement—a topic which he admitted was hardly relevant—for which he was afterwards rebuked on the ground that he divulged the proceedings of the Committee on the Conduct of the War.²⁹ It was the day before the end of the session. He talked until the evening recess came; he talked after the evening recess, and when he had at length concluded Wilson promptly moved that the Senate go into executive session.³⁰ The success of Wilson's motion would mean, of

²⁶*Globe*, 2d S. 37th Cong. p. 3384.

²⁷*Ibid.* p. 3385.

²⁸*Ibid.*

²⁹*Ibid.* pp. 3386-3392, 3401.

³⁰*Ibid.* p. 3392.

course, the failure of the bill. Trumbull protested against the indirection of this method of getting rid of the bill—did not want it “to be overslaughtered in this way”—and demanded the yeas and nays on Wilson’s motion. The result stood 25 for the executive session and 14 against it. The yeas were solidly Republican; the nays included five Republicans.³¹ The bill was decisively disposed of for the session.

The thirty-seventh Congress, in its second session, made no positive advance toward a determination of the habeas corpus issue. The House, to be sure, committed itself upon the question. But the bill which embodied its decision, while logically an assertion of Congressional jurisdiction over the subject of suspension, was so phrased, in the vital third section, that it could be and was interpreted as leaving unsailed the President’s right to suspend. The Senate’s disapproval of the bill was obvious. Its vote of 33 to 5 in favor of inserting the words “Congress not being in session” if *bona fide* would go far to show that the Senate was a supporter of the President’s initial claim. But its indirect though emphatic rejection of the bill leaves the question of its attitude on the issue still open. Once again Congress drew back from positive action on the habeas corpus question. The President’s claim rightfully to suspend under certain circumstances went again unchallenged.

³¹*Globe*, 2d S. 37th Cong. p. 3393.

CHAPTER IV.

THE ACTION OF THE THIRD SESSION.

The long-continued inaction of Congress came to an end March 3, 1863, with the passage of the Habeas Corpus Act of that date. Weeks before this, however, several Republican senators expressed the opinion that it was now too late for an assertion of exclusive Congressional jurisdiction over the matter. Lane of Indiana said, December 22, 1862: "Gentlemen speak of the President's usurpation of authority. The Constitution authorizes the suspension of the privilege of the writ of *habeas corpus*, without saying in express terms who shall exercise that authority. The President has done it. It is an accomplished fact and cannot be undone. Suppose we now say that, in our opinion, the authority is given to Congress, can we change his convictions of duty or control his actions? Such a course will only bring about a conflict of authority between Congress and the President, and weaken the power of both."¹ A similar thought was developed by Collamer, January 9, 1863: "The Executive is just as much clothed with authority, and bound in duty when called on, to give construction to the Constitution in the execution of it as we are, and his decision is just as binding as ours . . . and it is not common courtesy for one department of this Government to say to another, 'We say the Constitution means so and so, and we are infallible.' The judiciary, when the question arises before them in the proper form, decide the Constitution in the particular suit, and that is all there is in their decision."² Collamer then drew the practical conclu-

¹*Globe*, 3d S. 37th Cong. p. 158.

²*Ibid.*, p. 247.

sion that Congress should treat the President's decision as settled by a body as competent as itself, and shape its legislation accordingly. It should not pass any bill in which the necessary implication was that the President's decision was incorrect. The President should not be asked to approve any such bill and thus "publish to the world that he has done that which he had no legal right to do."³

Cowan expressed the same idea with more emphatic brevity, January 27: "Now, whether this question of the *habeas corpus* has been decided right or wrong, it has gone by; let it go . . . it has been decided; the decision has been acted upon; and it is idle for us now to agitate ourselves and divide ourselves in its discussion when we can come to no conclusion, because we have no judicial power, we can make no decision that will be binding upon anybody."⁴

The Democrats in Congress were by no means convinced that the question was settled. They opened the session with a vigorous and systematic onslaught upon Presidential suspension in which the tonic effect of the late elections and other manifestations of public opinion is apparent.⁵ Their attack was, however, unaccompanied by any plan for positive legislation.⁶

Republicans in House and Senate took up the question promptly and almost concurrently. December 8, 1862, Thaddeus Stevens, the aggressive and radical leader in the House, introduced a bill (House No. 591) "to indemnify the President and other persons for suspending the privilege of the writ of *habeas corpus*, and acts done in pursuance thereof; which was

³*Globe*, 3d S. 37th Cong. p. 247.

⁴*Ibid.* p. 542.

⁵See, e. g., Powell's jubilant reference to the elections, *ibid.* p. 33.

⁶The character of the attack is indicated by the resolutions offered during the first few days of the session. In the House Cox offered a resolution condemning extraordinary arrests, December 1—the first day of the session. *Globe*, 3d S. 37th Cong. p. 2. The next day Powell introduced a resolution in the Senate which was substantially identical with Cox's. *Ibid.* p. 3. December 1 Richardson made a motion in the House to secure information from the President concerning Illinois arrests. *Ibid.* The next day Powell sought similar information in the Senate concerning Kentucky arrests. *Ibid.* pp. 3, 14. December 3 Senator Saulsbury introduced his much-debated resolution for information touching two Delaware arrests. *Ibid.* pp. 4, 5.

read a first time.”⁷ The bill in its curt directness is characteristic of its author.

“Whereas, since the 4th day of March, 1861, the United States have been in an insurrectionary and rebellious condition, and the public safety has required that the privilege of the writ of *habeas corpus* should be suspended; and whereas during that time the privilege of the said writ has been several times suspended by the President of the United States, and several arrests and imprisonments have taken place under and in consequence thereof; and whereas there is not entire unanimity of opinion as to which branch of the Government possesses the constitutional power to declare such suspension: Therefore,

“*Be it enacted, &c.*, That all such suspensions, arrests and imprisonments, by whomsoever made or caused to be made, under the authority of the said President, shall be confirmed and made valid; and the said President, Secretaries, heads of Departments, and all persons who have been concerned in making said arrests, or in doing or advising any such acts as aforesaid, are hereby indemnified and discharged in respect thereof, and all indictments, and information, action, suits, prosecutions, and proceedings whatsoever commenced, or to be commenced, against the said President, or any of the persons aforesaid in relation to the acts and matters aforesaid, or any of them, are hereby discharged and made void.

“SEC. 2. *And be it further enacted*, That during the existence of this rebellion the President shall be, and is hereby, invested with authority to declare the suspension of the privilege of the writ of *habeas corpus*, at such times, and in such places, and with regard to such persons, as in his judgment the public safety may require.”⁸

The bill was obviously designed—it was in truth its main purpose—to void or prevent the bringing of civil or criminal suits against the President or any person acting under his authority for acts which would in the normal course of affairs be illegal. The danger was not altogether prospective.

⁷*Globe*, 3d S. 37th Cong. p. 20.

⁸*Ibid.* p. 529.

In the spring of 1862 Simon Cameron, late Secretary of War, had been arrested at the suit of Pierce Butler for "trespass *vi et armis*, assault and battery, and false imprisonment," and Secretary Welles had been exposed to similar reprisals.⁹ It was even to be feared that Abraham Lincoln might suffer greater humiliation. Colfax said, December 8, 1862: "We have either to vindicate him [the President] as now proposed or leave him to be persecuted as soon as he retires from office by those whom he arrested."¹⁰ Thaddeus Stevens went even further: "If there be a remedy for these false imprisonments it may extend to indictments as well as to civil suits, and how is the Government to indemnify the President for two years' imprisonment in the penitentiary?"¹¹

The Stevens bill lacked the ambiguity which had characterized nearly all the preceding habeas corpus measures. It unequivocally granted the President authority to suspend: it did not declare that the President "is authorized to suspend," but enacted that he "shall be and is hereby" authorized to suspend. And yet, did the bill implicitly condemn the President's claim to suspend on his own authority? Thirty-seven minority members of the House in a formal protest asserted that the bill "purports to indemnify the President and all acting under his authority for acts admitted to be wrongful."¹² Several members of the Senate and other members of the House, Republican and Democratic, interpreted the bill in a similar way.¹³

⁹*Globe*, 3d S. 37th Cong. pp. 165-166; 115 *Waf Records*, pp. 505-509; *Globe*, 2d S. 37th Cong. pp. 1763, 3245. Cowan intimated in 1866 that the Habeas Corpus Act was originally framed to protect an intimate friend of the President. *Globe*, 1st S. 39th Cong. p. 2021.

¹⁰*Globe*, 3d S. 37th Cong. p. 21.

¹¹*Ibid.* p. 22. Cf. Horace Binney's opinion in his letter of May 17, 1862, to Francis Lieber: "But without the Habeas Corpus clause it [the power to indemnify] would not belong to the Federal government at all. With that clause, however, if Congress has the power of suspension, and not the President, why does not the *ratihabito* cover the whole wrong, for the President's protection? It strikes me that this matter ought not to be neglected by the President's friends in the two houses, while they are the majority . . . I should be sorry to see the President come to grief between a bitter judiciary and a bitter jury." C. C. Binney's *Binney*, pp. 355-356.

¹²*Globe*, 3d S. 37th Cong. p. 165.

¹³In the Senate, Collamer (*ibid.* p. 248), Saulsbury (*ibid.* p. 543), and McDougall (*ibid.* p. 548). In the House, May (*ibid.* p. 1069), Walker (*ibid.* p. 1086), Yeaman (*ibid.*) and Stiles (*ibid.* p. 1087).

Olin's statement in the House is at least a tribute to the influence of Thaddeus Stevens: "In my judgment, sir—which may not be worth much—the bill is unnecessary. I hold that the President had the authority by law, and was the proper tribunal, to exercise all the powers that he has exercised in suspending the writ of *habeas corpus*; nevertheless I concur with my friend from Pennsylvania that a bill of this character is proper under the circumstances."¹⁴

Stevens's interpretation of his own measure must be given a great amount of weight: "I have not confessed the illegality of these acts, for this reason: the Attorney General of the United States and the Administration have held that the President had, without such a bill, full power; and if he had the power to order all these acts, then there is no remedy for anybody. A remedy exists only where there is a wrong. If the President had the right to suspend the writ of *habeas corpus*, and under that these results took place, I should like to know who had the right of action against him? There can be no such thing. If there be a remedy for these false imprisonments it may extend to indictments as well as to civil suits, and how is the Government to indemnify the President for two years' imprisonment in the penitentiary? What kind of indemnity is the Government to afford to men thus prosecuted under these laws? But, sir, if the President was right in supposing that he had the authority to suspend the privilege of the writ of *habeas corpus*, I admit with my friend from New York [Mr. Olin] that there would be no necessity for this bill. But then it would do no harm, it would confer no additional power, it would do only what could be done before. But I have recited that there is doubt on that subject. . . . I do doubt the authority of the President of the United States to suspend the privilege of the writ of *habeas corpus* except when there is an absolute necessity for him to have that power, or an emergency when Congress is not in session."¹⁵ The last is a significant concession from a great stickler for Congressional "sovereignty."¹⁶

¹⁴*Globe*, 3d S. 37th Cong. pp. 20-21.

¹⁵*Ibid.* p. 22.

¹⁶*Ibid.*

Stevens introduced his bill December 8. He proposed that it should be postponed for three days and that it should be made a special order and continue such until disposed of. He encountered, however, the exigent opposition of Vallandigham, and thereupon peremptorily withdrew his motion to postpone, asked that the bill be put upon its passage, and moved the previous question. A brief but warm wrangle over procedure ensued, but Stevens's domination of the majority was so firm that the bill, although still unprinted, was rushed through the various parliamentary stages and passed by a vote of 90 to 45. It was the most expeditious passage that a habeas corpus bill ever had during the civil war.¹⁷ Two weeks later, when the Republicans had had an opportunity to reflect upon their precipitation, Pendleton submitted the protest of the thirty-seven minority members against the bill and the manner of its passage. On Stevens's motion the resolution of protest was laid upon the table, 75 to 41.¹⁸

The Senate received the bill December 9 and referred it to the Judiciary Committee, of which Trumbull was still chairman.¹⁹

Trumbull's enduring interest in a solution of the habeas corpus problem was exhibited later in the same day. The debates on Saulsbury's resolution concerning the Delaware arrests were beginning to unfold their length. Trumbull interrupted their progress for a moment to announce that he would move to lay the resolution upon the table and to take up House Bill No. 362—"a practical question."²⁰ December 10 the Senate, on his initiative, took up the bill and ordered it printed with a view to its further consideration.²¹ Debate upon it began December 16.²²

The ambiguity of the third section of House Bill No. 362 had been demonstrated to the Senate in the session of 1861—

¹⁷*Globe*, 3d S. 37th Cong. pp. 14, 20-22.

¹⁸*Ibid.* pp. 165-166.

¹⁹*Ibid.* pp. 25, 26.

²⁰*Ibid.* p. 31.

²¹*Ibid.* p. 52.

²²*Ibid.* p. 102.

1862.²³ No senator alluded to it in the session of 1862-63. Every one who discussed the bill took it for granted that the bill, with its "That it is and shall be lawful for the President . . . to suspend . . . " meant Congressional authorization to suspend. Field's statement may be given as fairly typical. There were, he said, two objections to the third section: "The first is, it takes for granted that the power of suspending the privilege of the writ of *habeas corpus* is conferred by the Constitution upon Congress alone; and then it proposes that Congress should delegate to the President, not only the power of suspending the writ, but also of determining whether the exigency has arisen which would justify such a suspension . . . I hold that the Constitution of the United States confers upon the President, and not upon Congress, the power of suspending the privilege of the writ of *habeas corpus*; but if mistaken in this, I hold that Congress has no authority to delegate to the President the exercise of such a power."²⁴ Collamer went even further, and asserted that the bill was a condemnation of Presidential suspension: "It goes on the ground that anything he [the President] has done by way of imprisoning these people is not in the least altered by his suspension of the *habeas corpus*; that is to say, 'we are right about the construction of the suspension of the *habeas corpus* act [clause of the Constitution], and you are wrong.'"²⁵ It is at least curious that Howe did not remind the Senate of the other interpretation of the third section of the bill.

Collamer was dissatisfied with House Bill No. 362 because it seemed to him to reflect upon the President's claim to suspend. House Bill No. 591—Stevens's bill— was equally objectionable to him because it was, he feared, beyond the competence of Congress, which did not possess "the omnipotent powers of Parliament." If it was to be apprehended that the

²³ See chapter III, above.

²⁴ *Globe*, 3d S. 37th Cong., p. 216.

²⁵ *Ibid.* p. 247. See also statements of Senators Powell (*Globe*, 3d S. 37th Cong. p. 111), Lane of Indiana (*ibid.* p. 157), Wright (*ibid.* p. 200), Ten Eyck (*ibid.* p. 274), Trumbull (*ibid.* pp. 1090, 1092) and Doolittle (*ibid.* p. 1092). In the House, Wycliffe vigorously asserted, with animadversions, that the bill was declaratory. *Ibid.* p. 1105.

courts might consider the President's suspension an exercise of unfounded authority it would be, in his opinion, unwise to attempt to smother up the unconstitutionality by passing an act whose constitutionality would be questionable.²⁶ He did not confine himself to destructive criticism. His remarks were in fact prefaced by the introduction of a bill (Senate No. 457) embodying his views.²⁷ The bill was referred to the Committee on the Judiciary and on Sumner's motion was ordered to be printed.²⁸

Collamer's words made such an impression upon the Judiciary Committee that it reported a bill, substantially the same as his,²⁹ January 15, 1863, as a substitute for Stevens's Bill No. 591, which had lain dormant in the pigeon-holes of the committee ever since its reference early in December.³⁰ The first section of the substitute provided for the transfer of suits begun in a State court for trespasses or wrongs done or committed under the authority or color of authority of the President to the United States Circuit Court. The second section provided that, even if judgment should be given against the defendant or respondent, yet, should it appear to the court that the defendant or respondent had reasonable or probable cause for doing what he did, or had acted in good faith, no execution should issue or further proceeding be had until after the adjournment of the then next ensuing session of Congress. The third section authorized the carrying of a case in which final judgment had been rendered by the Circuit Court to the Supreme Court, and the fourth fixed a period beyond which suits could not be brought.³¹

In recommending the measure which his committee had reported Trumbull took pains to point out that it did not reflect upon the legitimacy of Presidential suspension: "I will say . . . that this bill does not depend at all upon the power of the President to suspend the writ of *habeas corpus*. Whether he has the power or not, this bill would be necessary

²⁶*Globe*, 3d S. 37th Cong. pp. 247-248.

²⁷January 9, 1863. Substance of bill is given, *ibid.* pp. 248-249.

²⁸*Ibid.* p. 249.

²⁹*Ibid.* pp. 821, 535, 539, 541.

³⁰*Ibid.* p. 821.

³¹Text, *ibid.* p. 529.

and it would be just as necessary if he had the power to suspend it as it would be if he had not; because the suspension of the writ of *habeas corpus* does not of itself justify the arrest of anybody. . . . So, if the writ of *habeas corpus* was suspended by act of Congress with the concurrence of the President, both acting together, there would be the same necessity for this act to protect the officers, in case, acting from probable cause and in good faith, they had wrongfully made arrests."³²

The discussion of the Judiciary Committee's substitute for Stevens's bill was animated, but it was begun and ended on the same day, January 27, 1863. The substitute underwent a variety of amendments, of which one offered by Cowan is noteworthy. It provided that the judge might interfere before judgment had been rendered, that is, that whenever in the course of the trial it was discovered that there was probable cause for making the arrest, the judge should charge the jury to that effect and tell it that that was a defence to the action and no judgment should ever be rendered.³³ Another and most important amendment was added at the instance of Sherman, to the effect that political prisoners arrested in peaceful States should have a hearing before the courts within thirty days, provided they were not persons subject to the articles of war.³⁴ The bill, as amended, was passed as a substitute for Stevens's bill by the handsome and almost suspicious majority of 33 to 7.³⁵ Its title was changed to the colorless "An

³²*Globe*, 3d S. 37th Cong. p. 534. Trumbull's explanation does not seem conclusive. The Democrats, in this session, harped much upon the argument that suspension does not of itself authorize extraordinary arrest. Collamer, the father of the bill recommended by Trumbull, held the opposite view. In introducing Senate Bill No. 457, he said: "What did the Executive need to do for these periods of extremity? What was wanted? It was this: that he might, if the privilege of that writ was suspended, arrest people who had not committed crimes, and hold them to prevent their committing crimes that would put the nation in jeopardy. If he was only to arrest those people who had committed crimes, he could do that without having the writ of *habeas corpus* suspended at all." *Ibid.* p. 247. Cf. his statement on the substitute bill, *ibid.* p. 550.

³³*Ibid.* p. 554. This amendment became section 2 of the substitute.

³⁴*Ibid.*

³⁵*Ibid.* Text of the bill is given below, pp. 271-274.

act to regulate judicial proceedings in certain cases therein mentioned."³⁶

The emasculation of the title of the Senate's substitute, and the absence from it of anything corresponding to that clause of the Indemnity Bill which invested the President with authority to suspend, are not to be taken as evidence that the Senate was agreed that the question of the legitimacy of Presidential suspension was an idle one. That question was still to be dealt with by the Senate in the pending House Bill No. 362.³⁷ For the Senate's bill, just passed, was particularly concerned with those responsible for extraordinary arrests, while Bill No. 362 was devoted almost exclusively to the political prisoners themselves. The passage of the Senate's substitute for Stevens's bill did not interrupt proceedings upon the latter measure.

The debate upon House Bill No. 362, which had been taken up by the Senate December 10, 1862, did not become brisk until February. Up to that time it had been conducted in a leisurely fashion through set speeches made at irregular intervals, and presenting the customary arguments.³⁸ It was Trumbull—the man above all who is responsible for the Habeas Corpus Act of 1863—who gave life to the debate, February 19, by offering a substitute amendment to the bill. Trumbull's amendment was largely a recast of the bill, the third section alone undergoing grave alteration. The order of the sections was also changed, the third section of the House bill becoming the first section of the substitute.³⁹ Thus the first section of the substitute dealt with the suspension of the privilege of the writ, while the second and third

³⁶*Globe*, 3d S. 37th Cong. p. 554. Vallandigham had tried on the day of the passage of Stevens's bill "to indemnify the president and other persons" by the House to have the title reflect more obviously upon the legitimacy of Presidential suspension by the addition of the words "and to empower the President to suspend the privilege of the writ of *habeas corpus* throughout the United States." He failed, of course. *Ibid.* pp. 20-21.

³⁷It was really involved in Sherman's eleventh-hour amendment, but the point can best be considered in the last chapter of this essay.

³⁸Field's elaboration of the argument that unless the President can suspend the virtue of suspension is lost, is very clever. *Ibid.* pp. 218-219.

³⁹Text of the substitute amendment, *ibid.* pp. 1090-1091. For Trumbull's categorical statement of the changes he has made, see *ibid.* p. 1092.

sections provided for the liberation of political prisoners under conditions.

The first section of the substitute is the one with which this essay has particularly to do. It provided "That, during the present rebellion, the President of the United States, whenever in his judgment the public safety may require it, is authorized to suspend, by proclamation, the privilege[s] of the writ of *habeas corpus*, in all cases of political offences, throughout the United States, or any part thereof. . . ."

There are important differences between this section and the third section of the House bill. Trumbull, in explaining the differences, summed them up thus: "The House bill limited the suspension until Congress should meet. The substitute I propose authorizes the suspension wherever the President, by proclamation, shall declare the writ suspended, so long as the proclamation continues in force and the rebellion exists."⁴⁰ Another important difference he did not allude to. It is fundamental.

What is the meaning of the words "*Be it enacted* That, during the present rebellion, the President . . . is authorized to suspend . . . ?" The phrasing differs from the outspoken "*And be it further enacted*, That . . . the President shall be, and is hereby invested with authority to declare the suspension" of House Bill No. 591 and from the corresponding "*And be it further enacted*, That it is, and shall be lawful for the President . . . to suspend" of House Bill No. 362. Trumbull, who wrote the clause, said that it meant Congressional authorization: "The substitute I propose authorizes the suspension . . . ;"⁴¹ and that the section might be so interpreted everyone who expressed his views on the point agreed.⁴² And yet, if Trumbull meant the bill to authorize suspension, why did he couch the clause in such unusual language—*be it enacted* that the President is authorized to suspend? Doolittle—not Trumbull—was the

⁴⁰ *Globe*, 3d S. 37th Cong. p. 1092.

⁴¹ *Ibid.*

⁴² See *ibid.* pp. 1093, 1094, 1158, 1183, 1187, 1204, 1205 for statements of Carlile, Bayard, Powell, Richardson, Howard, Saulsbury and Collamer, respectively.

first to draw attention to the significance of the phraseology: "Mr. President, the exposition given by my honorable friend from Illinois of this bill is very complete, although there is one suggestion that escaped him which I beg leave to occupy the attention of the Senate long enough to present. It is this: the first section of his substitute is so drawn that it does not assume of itself that the Congress of the United States clothes the Executive with power to suspend the writ. It does not assume to determine whether his authority to suspend the writ in cases of invasion or insurrection is derived from the act of Congress which we now pass, or is derived from the Constitution. . . . It does not assume to say that 'the President is hereby authorized to do it;' and therefore those persons who conscientiously maintain that under the Constitution the President is clothed with power without any legislation of Congress, can vote for this section upon the ground that this section is merely declaratory of a power which inheres in him under the Constitution itself; and those who maintain that it is to be derived from an act of Congress can sustain this section upon the ground that it is an enacting clause which gives him the power."⁴³ Trumbull himself conceded the "double" interpretation: "If ever there was an occasion to suspend the writ of *habeas corpus* in case of rebellion, surely that occasion exists now; and I am for giving that authority, for settling this mooted question, for it exists somewhere, either in the Executive or Congress, one or the other; and those of us who believe that Congress possesses the power can vote for the bill granting it; and those who believe the Executive has it, it seems to me, cannot object to the declaratory act at any rate."⁴⁴ Bayard spoke somewhat sharply of the "avowal of the design to pass a law for the purpose of leaving it so ambiguous that men of different minds may unite in its passage,"⁴⁵ but although the avowal was new, still the chief difference between this clause of the bill and the corresponding clauses of its predecessors was not the ambiguity, but the cleverness, the perfection, so to say, of the

⁴³ *Globe*, 3d S. 37th Cong. p. 1092. See also pp. 1093, 1194.

⁴⁴ *Ibid.* p. 1186.

⁴⁵ *Ibid.* p. 1094.

ambiguity. The designed and confessed ambiguity of the clause is indubitable, and it is impossible to maintain that those who voted for the bill thereby condemned Presidential suspension as illegitimate.⁴⁶

Trumbull's conviction that the "mooted question" should be settled was shared by partisans of Presidential suspension. Howard, for example, who ultimately voted for the bill, said emphatically: "But, sir, if I vote for any measure purporting to give to the President of the United States a modified authority to suspend . . . I shall do so, as the lawyers say, *protestando*. I shall do it under a protest that the President of the United States, upon a fair construction of the Constitution, is already vested by the instrument with full authority to suspend. . . I am anxious to avoid, if we can avoid, the setting of a precedent which shall in the future look even to a divesting of the power of the Executive of this important authority. Still, I may, as I have observed, be induced to yield my opinions for the purpose of conciliation and harmony, and to vote for some measure that may be thought to quiet alarm, however unfounded the alarm may be."⁴⁷ Doolittle's amplification of this last thought is admirable: "Mr. President, my opinion is this: whether the power is derived from the Constitution or derived from the act of Congress to suspend the writ, it is the best policy to have it declared by Congress that the power exists either under the Constitution or under the act of Congress. . . We know very well that the people of the United States are so familiar with these terms, 'be it enacted,' which are used in the passage of laws by their representatives, whom they have chosen, who speak their own voice, who legislate for them, who declare the popular will, which, as our ancestors maintained, is to them the voice of God, that they submit to an enactment,

⁴⁶ This was asserted by Bayard and Saulsbury, for example. *Globe*, 3d S. 37th Cong. pp. 1094, 1204.

⁴⁷ *Ibid.* p. 1187. Cf. George Bancroft's interesting idea of the value of such a precedent, in his letter to Lincoln, February, 1863: "For one, though I think your position perfectly safe without it, I hope Congress will pass some bill, alike for your protection in the present case and for our security, should the nation ever suffer itself to elect a ticket like that of Breckinridge and Lane." Nicolay and Hay, vol. VIII, p. 36, footnote.

passed by their representatives, commencing 'be it enacted,' as the Israelites of old would submit to a 'thus saith the Lord.' But, sir, when a thing is assumed to be done by the order of any one individual, the Secretary of War or the President, their jealousy of despotic power exercised by an individual is such, that although he may be acting within his clear constitutional power, the people, perhaps, are less likely to acquiesce in an order of the War Department or an order of the President than they are to acquiesce in an enactment of Congress."⁴⁸

The propositions embodied in the last two sections of Trumbull's substitute bill were not looked upon with unmixed favor by the majority of the Republicans. There was a feeling that political prisoners might secure their liberation too quickly for the good of the country.⁴⁹ February 23, when the passage of the bill seemed imminent, Collamer intervened and made a strong and determined attack upon the second and third sections: "The first section authorizes the President to suspend the *habeas corpus*: [A little later he employed this phraseology: "You authorize or declare, if you choose to use that word, that the President has the power to suspend the *habeas corpus*"]; which, I take it, if it means anything, means that he may hold persons in prison, in arrest, without being interfered with by any attempt of the courts to set them at liberty. . . . After thus authorizing him to suspend the *habeas corpus*, the second section goes on to provide that the persons who are arrested and imprisoned shall be brought before the courts, and, if not indicted, discharged. The third section provides that they may be brought before a judge at any time after twenty days. . . . This seems to imply that nobody is to be arrested unless they are persons guilty of some crime for which they can be indicted. . . . It seems to me that the second and third sections are utterly inconsistent with the first. The first section authorizes the sus-

⁴⁸ *Globe*, 3d S. 37th Cong. p. 1092.

⁴⁹ This was expressed by Wilson, January 9, 1863, apropos of House Bill No. 362: "I do not know that I have any anxiety to try these prisoners . . . and I want them tried in the manner in which the Government sees fit to do it." *Ibid.* p. 204.

pension of *habeas corpus*, so that the courts and judges cannot relieve the man; the second and third sections provide that they shall relieve the man."⁵⁰ The mantle worn by Howe on a similar occasion in the second session seems now to have rested on Collamer's shoulders.⁵¹

Trumbull used all his skill of argument and persuasion to meet this attack, pointed out that no one could be liberated except on conditions, and asked Collamer if he wanted the writ suspended forever.⁵² Collamer pushed the attack home, and his motion to strike out the last two sections would have succeeded had not the Democrats and Unionists rallied to the assistance of Trumbull. The motion failed by the close vote of 18 to 20. Sixteen of the 18 were Republicans; the other two, Wall and Willey, subsequently voted against the bill. Only nine of the 20 were Republicans.⁵³

The substitute bill, fortified by a number of minor amendments,⁵⁴ was finally passed, February 23, 1863, by a practically party vote of 24 to 13, Hicks, usually an Administration man, being the only non-Republican to vote for it and Lane of Indiana the only Republican to vote against it.⁵⁵ The title of the bill was amended to read, "An act to provide for suspending the privilege of the writ of *habeas corpus*, for the discharge of State prisoners and others, and to authorize taking bail in certain cases."⁵⁶ The bill—House Bill No. 362 as amended by the Senate—was returned to the House February 24.⁵⁷ It did not, however, become the subject of direct action in the House, but was considered only so far as it was em-

⁵⁰ *Globe*, 3d S. 37th Cong. pp. 1205-1206.

⁵¹ See above, p. 243.

⁵² *Globe*, 3d S. 37th Cong. pp. 1206-1207.

⁵³ *Ibid.* p. 1207.

⁵⁴ The chief change in the first section was the ellision of "by proclamation." See text of bill as passed, below, pp. 274-277.

⁵⁵ YEAS—Anthony, Chandler, Clark, Doolittle, Fessenden, Foot, Foster, Grimes, Harlan, Harris, Hicks, Howe, King, Lane of Kansas, Morrill, Pomeroy, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, Wilmot, and Wilson of Massachusetts.

NAYS—Carlille, Henderson, Kennedy, Lane of Indiana, Latham, Powell, Rice, Richardson, Saulsbury, Turple, Wall, Willey, and Wilson of Missouri. *Ibid.* p. 1208.

⁵⁶ *Ibid.* For text of bill see below, pp. 274-277.

⁵⁷ *Ibid.* p. 1249.

bodied in a Committee of Conference bill framed to reconcile the conflicting views of the two chambers upon House Bill No. 591.

The Senate's substitute for Stevens's House Bill No. 591 had been announced to the House January 28, 1863—the day after its passage by the Senate—and was taken from the Speaker's table February 12.⁵⁸ It received a brief and characteristic greeting from Stevens: "I hope that we shall non-concur and refer the matter to a committee of conference."⁵⁹ The measure was debated from time to time in a rambling discussion in which the Democrats did most of the talking and thrashed the old wheatless straw. Stevens closed the debate, February 19, by asking the House to non-concur. The House non-concurred, 114 to 35, and appointed its committee members.⁶⁰ They were Stevens, Bingham and Pendleton. The Senate members of the committee were Trumbull, Collamer and Willey.⁶¹ All save Willey had been prominent in habeas corpus debates.

The report of the Committee of Conference was presented to the House February 27.⁶² After considerable wrangling it was agreed that Saturday evening, February 28, should be given over to general debate and that the vote should be taken Monday, March 2.⁶³ The opportunity to make "campaign" speeches was so tempting that the evening of February 28 passed without any discussion of the bill. March 2, about one o'clock P. M., the report of the Committee of Conference was agreed to, 99 to 44.⁶⁴ The fight was obviously left for the Senate.

Immediately after the reading of the House message announcing the acceptance of the report of the committee Trumbull submitted the report to the Senate.⁶⁵ He explained, not without a trace of disingenuousness, the make-up of the

⁵⁸ *Globe*, 3d S. 37th Cong. pp. 572, 916.

⁵⁹ *Ibid.* p. 916.

⁶⁰ *Ibid.* p. 1107.

⁶¹ *Ibid.* p. 1119.

⁶² *Ibid.* p. 1354.

⁶³ *Ibid.* p. 1359.

⁶⁴ *Ibid.* p. 1479.

⁶⁵ *Ibid.* p. 1485.

Conference bill.⁶⁶ "I will state," he said, in his introductory remarks, "for the information of the Senate, that the report embraces nothing but the subject matter of the bill which passed the House of Representatives [Bill No. 591], and the amendments which passed the Senate."⁶⁷ A comparison of texts shows that the Conference measure was practically a fusion of the Senate's substitutes for House bills 362 and 591.⁶⁸ Sections one, two and three of the Conference bill—the Habeas Corpus Act of March 3, 1863—are almost an exact copy of the three sections of the former, and in the order named;⁶⁹ sections five, six and seven are identical with sections one, three and four of the latter. Section four of the Conference bill differs in phraseology from section two of the Senate's substitute for 591 but its practical effect is much the same.

The report of the Committee of Conference was received by the opposition senators with marked signs of disapproval. They resorted to confessed filibusterism to prevent its acceptance. By this means they delayed action until close to five o'clock A. M. of the last night of the session, and it was only by virtue of what under the circumstances may be called legitimate jockeying—to which the presiding officer, Senator Pomeroy, lent naïve aid—that the majority secured the concurrence of the Senate in the report.⁷⁰ The next morning the opposition senators protested against the tactics used against them and desired to have an opportunity to move to reconsider the vote. Doolittle suggested that the vote on the motion to send to the House for the report should be considered a test one, and therefore asked the yeas and nays.⁷¹

⁶⁶*Globe*, 3d S. 37th Cong. pp. 1436-1437.

⁶⁷*Ibid.* p. 1436.

⁶⁸ See Appendices, below.

⁶⁹ The only change in the first section is the omission of a tautological "or."

⁷⁰*Globe*, 3d S. 37th Cong. pp. 1460-1477. The tactics employed were clever. After considerable maneuvering around motions of various kinds, Fessenden called for the yeas and nays on a motion to adjourn. The vote was yeas 4, nays 33. Immediately the presiding officer said: "The question is on concurring in the report of the committee of conference. Those in favor of concurring in the report will say 'aye,' those opposed 'no.' The ayes have it. It is a vote. The report is concurred in." Then Trumbull: "I move that the Senate now proceed to the consideration of House bill No. 599."—Protests. *Ibid.* p. 1477.

⁷¹*Ibid.* pp. 1480-1494.

It would seem that the vote was so regarded. At any rate the alignment of the senators on the vote was what might have been predicted by one familiar with the previous votes on the habeas corpus question. The vote stood 13 to 25.⁷² So the return of the report was not requested. The bill was signed by the President the same day, and bears the title "An Act relating to Habeas Corpus, and regulating Judicial Proceedings in certain cases."⁷³

⁷²YEAS— Bayard, Carlisle, Davis, Henderson, Latham, Nesmith, Powell, Rice, Richardson, Saulsbury, Turple, Willey, and Willson of Missouri.

NAYS— Anthony, Chandler, Clark, Dixon, Doolittle, Foster, Grimes, Harlan, Harris, Hicks, Howard, Howe, King, Lane of Indiana, Lane of Kansas, Morrill, Pomeroy, Sherman, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, Willmot and Willson of Massachusetts. *Globe*, 3d S. 37th Cong. p. 1494.

⁷³*Ibid.* Appendix, p. 217. For text, see below, pp. 278-283.

CHAPTER V.

CONCLUSIONS.

It is now possible to draw some definite conclusions as to the nature of the precedent made by Congress in the years 1861-1863.

Congress did not, by passing the act of March 3, 1863, declare by implication or otherwise the illegality of Presidential suspension. The authors or sponsors of the bills which were ultimately merged into the act were careful to assert—and the bills themselves bear out the assertion—that the question of the rightfulness of the President's action was not at issue. The first section of the act, in phraseology which is almost unique, although it has been little remarked, enacts "That, during the present rebellion, the President . . . whenever, in *his* judgment, the public safety may require it, is authorized to suspend. . . . And whenever and wherever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled . . . to return the body of any person or persons detained by him *by authority of the President*; but upon the certificate, under oath, of the officer . . . that such person is detained by him as a prisoner *under authority of the President*, further proceedings . . . shall be suspended . . . so long as said *suspension by the President* shall remain in force, and said rebellion continue."¹ This phraseology is not accidental; it is the product of a prolonged process of refinement, commencing July 6, 1861, in which the dominating motive was unquestionably a desire not to deny the President's right to suspend. The long acquiescence of Congress in the President's suspension of the privilege of the writ coupled with its formal enactment in the

¹ Italics are not in the original. No reference was made, in any of the debates, to the possible significance of the words "during the present rebellion."

Habeas Corpus Act that the President is authorized to suspend were, in truth, recognition by Congress of the President's right to suspend.²

On the other hand, Congress, in passing the act, asserted its right to take control of the suspension of the privilege of the writ. If the first section was a recognition by Congress of the legality of Presidential suspension, the remainder of the act³ was an assertion of the jurisdiction of Congress over the matter of habeas corpus suspension.⁴ It is not possible to entertain the theory that Congress, by the act, "simply meant to declare what the measure of authority was in the President under the Constitution and independent of the act."⁵ Doolittle told the naked truth when he admitted that, "taking the whole thing together," the act provided for "a modified suspension of the writ of *habeas corpus*."⁶

The action of Congress, the only possible competitor of the President, in recognizing his right to suspend, and in the same act assuming control of the suspension, perplexed some of the champions of the President's exclusive right to suspend. Horace Binney, the most redoubtable of these, said in a letter to a friend: "As to the Habeas Corpus, I will continue to think about it, as I have done. One of my difficulties is that Congress have bed—d the subject by their Act, having first, in new and unusual language for an Act of Congress, asserted or declared the President's right in the strongest and most ex-

² Cf. Secretary Chase's statement of September 15, 1863: "You, Mr. President, have believed that you have the power to suspend the writ of *habeas corpus* without being authorized by Congress, and in some cases have acted on this belief. After much consideration I have come to the conclusion that your opinion and action are sanctioned by the constitution. Whatever doubt there may have been as to your power to suspend the writ, it has been removed by express legislation. The act of 3d March last, approved by you, authorizes you to suspend the writ in any case during the existing rebellion, when in your judgment the public safety may require it." *Warden's Chase*, p. 545.

³ As already shown, the first section itself may be interpreted as authorizing suspension by the President. See above, p. 256. See also below, pp. 266-267, footnote.

⁴ It should be clear to the reader that the evidence presented in this essay is not believed to affect the right, but only the exclusive right, of Congress to suspend. Cf. Dunning, *Essays on the Civil War and Reconstruction*, pp. 42-43.

⁵ Conjectural Interpretation of Howe, February 10, 1863. *Globe*, 3d S. 37th Cong., p. 1093.

⁶ *Ibid.* p. 1207. Cf. *ex parte Milligan*, 4 Wallace, p. 4.

plicit terms, and then proceeded to regulate partially his proceedings, as if the power was their own. If I could make an argument to justify this, I should already have tried it."⁷ In spite of this natural perplexity of a lawyer—a great lawyer—it must be said that the solution of the habeas corpus problem offered by the act of March 3, 1863, was practical and was well-fitted to the exigencies of rebellion or invasion and to the susceptibilities of a self-governing people. It was in accord with President Lincoln's initial opinion, wherein he had not claimed an exclusive right to suspend;⁸ it satisfied the general plea of Henry Wilson, who had introduced the first habeas corpus measure. In his fiery speech of February 21, 1863, Wilson said: "My judgment tells me that the President of the United States has the power in time of insurrection or rebellion to suspend the writ of *habeas corpus*. The power by the Constitution is confided to the Government, to the President or Congress, or both. If there is no law upon the statute-book, and insurrection or revolution is sweeping over the land, and Congress is not in session, has not the President of the United States, in an hour like that, the power to suspend the writ of *habeas corpus*? If he has not that power, he ought to have it."⁹ Finally it may be recalled, even at the risk of a *petitio principii*, that this solution satisfied a majority of each House of Congress and received the approval of the President, March 3, 1863.

The importance of the precedent made in 1861-1863 is obvious. It is, from the *de facto* standpoint, the strongest precedent there is. The privilege of the writ of habeas corpus had never been suspended, since the Constitution went into force, until 1861.¹⁰ Constitutional theory and legal precedent

⁷C. C. Binney's *Binney*, pp. 388-389.

⁸"Now it is insisted that Congress, and not the executive, is vested with this power. But the Constitution is silent as to which or who is to exercise the power, and as the provision was plainly made for a dangerous emergency, it cannot be believed the framers of the instrument intended that in every case the danger should run its course until Congress could be called together, the very assembling of which might be prevented, as was intended in this case, by the rebellion." See larger extract from the message, above, pp. 221-222.

⁹*Globe*, 3d S. 37th Cong. p. 1164.

¹⁰"The privilege of this great writ had never before been withheld from the citizen."—The Court, in *ex parte Milligan*, 4 Wallace, p. 115.

may find difficulty in fitting this historical precedent into pre-existing categories,¹¹ but theory and legal precedent, however stubborn and entrenched, must sooner or later yield to fact. Even the Supreme Court of the United States could not expect acquiescence in a decision against Congress and the President on the question of the right of the President to exercise a power so vital to the safety of the State as the power to suspend the privilege of the writ of habeas corpus. Taney's Circuit Court decision¹² was powerless against the Executive. The Supreme Court has not been placed in a position which has required it to pass upon the delicate question of the legality of suspension by the President.¹³ But if the Court ever has to pass upon the question, it is reasonable to anticipate that it is likely to attach great weight to the historical precedent of 1861-1863.¹⁴

¹¹ If it were the correct interpretation of the evidence submitted in the first four chapters of this essay that the President, in suspending, merely anticipates Congressional action, in default of which his suspension would be illegal, then the legal difficulties would vanish. In *Brown vs. United States*, 1814, Story said in his dissenting opinion: "I am perfectly satisfied that the position is well-founded, that no subject can legally commit hostilities, or capture property of an enemy, when, either expressly or constructively, the sovereign has prohibited it. But suppose he does, I would ask if the sovereign may not ratify his proceedings; and thus, by a retroactive operation give validity to them? Of this there seems to be no legal doubt." 8 *Cranoh*, p. 133. In the *Prize Cases*, 1862, the court quoted this dictum with approval, although with little regard for the sacredness of quotation marks, but at the same time suggested that the legality of such retroactive legislation might be questionable in a criminal case. 2 *Black*, pp. 670, 671. Finally the Court, in 1883, in *Mitchell vs. Clark*, a case which involved the construction of the Habeas Corpus Act, swept aside the doubt expressed in 1862. Here the Court said: "That an act passed after the event, which in effect ratifies what has been done, and declares that no suit shall be sustained against the party acting under color of authority, is valid, so far as Congress could have conferred such authority before, admits of no reasonable doubt. These are ordinary acts of indemnity passed by all governments when the occasion requires it." 110 *U. S.* p. 640. If this doctrine were fully applicable to suspension of habeas corpus by the President then the American practice would be substantially the same as the British has been under Cabinet government, with the grave difference that the American Executive could not be certain of legislative indemnity, if Congress were hostile to him.

¹² *Ex parte Merryman*.

¹³ In *ex parte Milligan*, the *cause célèbre* of 1866, the question was raised and argued by counsel, but the Court refrained from expressing itself upon it, taking it as undisputed that the act of March 3, 1863, gave the President authority to suspend. 4 *Wallace*, pp. 2-142.

¹⁴ It is not believed that the validity of these conclusions (chapter V) is affected by the very perfunctory obedience paid by the executive authorities to the requirements of the Habeas Corpus Act. The President acknowledged the

APPENDIX I.

HABEAS CORPUS BILLS PASSED BY EITHER
HOUSE, 1861-1863.

BILL NO. 362, PASSED BY THE HOUSE, JULY 8, 1862.

An Act to provide for the discharge of State prisoners and others, and to authorize the judges of the United States courts to take bail or recognizance to secure the trial of the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State and the Secretary of War be, and they are hereby, directed forthwith or as soon as practicable to furnish to the judges of the circuit and district courts of the United States and of the District of Columbia a list of the names of all persons, citizens of States in which the administration of

obligation of the act by approving it, and his Secretary of War, Stanton, by order of March 23, 1863, directed Judge-Advocate-General Holt to see that the provisions of the act were observed. 121 *War Records*, p. 255. Holt construed the act most narrowly, and only once between March, 1863 and February, 1865—in the spring of 1863—did he furnish to the courts the lists required by the act. 118 *War Records*, pp. 765-766; 121 *War Records*, pp. 255-257. February 18, 1865, Stanton officially reported to the Senate that he had "no knowledge or information of any other persons held as state or political prisoners of the United States by order or authority of the President of the United States or of the Secretary of State, or of the Secretary of War, in any fort, arsenal, or other place, since the date of the report of the Judge-Advocate-General" [June 9, 1863]. This is an astounding statement. September 15, 1863, President Lincoln and the other departmental heads were, according to Secretary Chase, unfamiliar with the terms of the act. Warden's *Chase*, p. 546. The President's suspending proclamation of September 24, 1863, recites the act of March 3, 1863, but not in a way which proves that the President relied upon it as his authority to suspend. Lincoln's *Works*, vol. II, pp. 406-407. The same is true of the suspending proclamation of July 5, 1864. *Ibid.*, pp. 541-543. Cf. Lincoln's letter to M. Birchard and others, June 26, 1863. *Ibid.*, p. 361. Some political prisoners who sought release under the provisions of

the laws has continued unimpaired in the said Federal courts, who are now, or may hereafter be held, as prisoners of the United States in any fort, arsenal, or other place, as State or political prisoners, or otherwise than as prisoners of war; the said list to contain the names of all such who reside in the respective jurisdictions of said judges, or who may be deemed by the said Secretaries, or either of them, to have violated any law of the United States in any of said jurisdictions, and also the date of each arrest. And in all cases where a grand jury having attended said courts, or either of them having jurisdiction in the premises, since the arrest of said persons, has terminated its session without finding an indictment, or presentment, or other proceeding against such persons, and in cases hereinafter provided for, it shall be the duty of said judges forthwith to order the discharge of such prisoner from said imprisonment, and every officer of the United States having custody of such prisoner is hereby directed immediately to obey and execute said judge's order, and in case he shall delay or refuse so to do, he shall be subject to indictment for a misdemeanor, and be punished by a fine of not less than \$500, and imprisonment in the common jail for a period not less than six months, in the discretion of the court.

SEC. 2. *And be it further enacted*, That in case any of such prisoners shall be under indictment or presentment for any off-

the act were spirited away from the jurisdiction of the court. Appleton's *American Annual Cyclopædia*, 1864, pp. 450, 453; 1865, p. 414. In 1865, the President twice refused to obey the requirements of the second section of the act, and forbade the officers having the custody of the prisoners to surrender them to the court [Supreme Court of the District of Columbia]. The President endorsed on the writ of habeas corpus sued out by one of them: "The within named John Dugan was arrested on and is imprisoned by my authority. This writ of *habeas corpus* is suspended, and the officer having Dugan in custody is directed not to produce his body, but to hold him in custody until further order, giving this order on your return to the Court." The writ for the other, C. V. Hogan, was similarly endorsed. In both cases the court held that the President's constitutional authority to suspend was not restricted by the act—that the act was virtually null. 6 *D. C.* pp. 131-148; McPherson: *History of the Rebellion*, p. 562. No detailed investigation of executive violations of the act has been attempted, but the Congressional debates of 1864-1865 leave little doubt as to the conclusions which such an investigation would compel. They reveal sharp and sweeping condemnations of the executive authorities for their disregard of the act, made not only by political enemies of the Administration, but by such warm friends as Lyman Trumbull, Henry Winter Davis, Reverdy Johnson and J. A. Garfield. See *Globe*, 2d S. 38th Cong. pp. 63, 73 ff., 189, 255-257., 318-320, 784, 1823-1333 and 1872-1380.

ense against the laws of the United States, and by existing laws bail or a recognizance may be taken for the appearance for trial of such person, it shall be the duty of said judges at once to discharge such person upon bail or recognizance for trial as aforesaid. And in case the said Secretaries of State and War shall for any reason refuse or omit to furnish the said list within five days from and after the passage of this act, any citizen may, by a petition alleging the facts aforesaid touching any of the persons so as aforesaid imprisoned, supported by the oath of such petitioner or any other credible person, obtain and be entitled to have the said judge's order to discharge such prisoner: *Provided, however,* That the said judge shall be satisfied such allegations are true, and shall also, in all cases included in this bill, or if the public safety shall require it, have power and be required to take a recognizance or bail from such prisoner to keep the peace and be of good behavior toward the United States, and also to appear before the proper court, if he shall deem the same necessary after due examination of the case. And it shall be the duty of the district attorney of the United States to attend at such examination by said judge.

SEC. 3. *And be it further enacted,* That it is, and shall be lawful for the President of the United States, whenever, in his judgment by reason of "rebellion or invasion the public safety may require it," to suspend, by proclamation, the privilege of the writ of *habeas corpus* throughout the United States or in any part thereof, and whenever the said writ shall be suspended as aforesaid, it shall be unlawful for any of the judges of the several courts of the United States, or of any State, to allow said writ, anything in this or any other act to the contrary notwithstanding.¹

BILL NO. 591, PASSED BY THE HOUSE, DECEMBER 8, 1862.

An Act to indemnify the President and other persons for suspending the privilege of the writ of Habeas Corpus, and acts done in pursuance thereof.

Text is given above, p. 248.

¹ *Globe*, 2d S. 37th Cong. pp. 3105-3106.

SENATE SUBSTITUTE FOR BILL NO. 591, PASSED BY THE SENATE,
JANUARY 27, 1863.

An Act to regulate Judicial Proceedings in certain cases therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court against any officer, civil or military, or against any other person, for any arrest or imprisonment made or other trespasses or wrongs done or committed, or any act omitted to be done, at any time during the present rebellion, by virtue or under color of any authority derived from or exercised by or under the President of the United States, or any act of Congress, and the defendant shall, at the time of entering his appearance in such court, or if such appearance shall have been entered before the passage of this act, then at the next session of the court in which such suit or prosecution is pending, file a petition stating the facts and verified by affidavit for the removal of the cause for trial at the next circuit court of the United States, to be holden in the district where the suit is pending, and offer good and sufficient surety for his filing in such court, on the first day of its session, copies of such process and other proceedings against him, and also for his appearing in such court and entering special bail in the cause, if special bail was originally required therein, it shall then be the duty of the State court to accept the surety and proceed no further in the cause or prosecution, and the bail that shall have been originally taken shall be discharged. And such copies being filed as aforesaid in such court of the United States, the cause shall proceed therein in the same manner as if it had been brought in said court by original process, whatever may be the amount in dispute or the damages claimed, or whatever the citizenship of the parties, any former law to the contrary notwithstanding. And any attachment of the goods or estate of the defendant by the original process shall hold the goods or estate so at-

tached to answer the final judgment in the same manner as by the laws of such State they would have been holden to answer final judgment had it been rendered in the court in which the suit or prosecution was commenced. And it shall be lawful in any such action or prosecution which may be now pending, or hereafter commenced, before any State court whatever, for any cause aforesaid, after final judgment, for either party to remove and transfer, by appeal, such case during the session or term of said court at which the same shall have taken place, from such court to the next circuit court of the United States, to be held in the district in which such appeal shall be taken, in manner aforesaid. And it shall be the duty of the person taking such appeal to produce and file in the said circuit court attested copies of the process, proceedings, and judgment in such cause; and it shall also be competent for either party, within six months after the rendition of a judgment in any such cause, by writ of error or other process, to remove the same to the circuit court of the United States of that district in which such judgment shall have been rendered; and the said circuit court shall thereupon proceed to try and determine the facts and the law in such action, in the same manner as if the same had been there originally commenced, the judgment in such case notwithstanding. And any bail which may have been taken, or property attached, shall be holden on the final judgment of the said circuit court in such action, in the same manner as if no such removal and transfer had been made, as aforesaid. And the State court from which any such action, civil or criminal, may be removed and transferred as aforesaid, upon the parties giving good and sufficient security for the prosecution thereof, shall allow the same to be removed and transferred, and proceed no further in the case: *Provided, however,* That if the party aforesaid shall fail duly to enter the removal and transfer, as aforesaid, in the circuit court of the United States, agreeably to this act, the State court by which judgment shall have been rendered, and from which the transfer and removal shall have been made, as aforesaid, shall be authorized, on motion for that purpose, to issue execution, and to carry into effect any such judgment, the same as if no such removal and transfer had been made:

And provided, also, That no such appeal or writ of error shall be allowed in any criminal action or prosecution where final judgment shall have been rendered in favor of the defendant or respondent by the State court. And in any action or prosecution against any person, as aforesaid, it shall be lawful for such person to plead the general issue, and give this act and any special matter in evidence. And if in any suit hereafter commenced the plaintiff is nonsuited or judgment pass against him, the defendant shall recover double costs.

SEC. 2. *And be it further enacted,* That if it shall appear upon the trial of any action provided for and mentioned in the first section of this act that there was probable cause for the arrest, imprisonment, or other act complained of, or that in making such arrest or imprisonment, or committing such act, the defendant acted in good faith, under the authority or order of the President of the United States, or under an act of Congress, then, and in every such case, the foregoing facts, or either of them, shall constitute a full and complete defence to the action; and it shall be the duty of the court trying the cause so to instruct the jury, and that their finding must be accordingly.

SEC. 3. *And be it further enacted,* That any suit or prosecution described in the first section of this act, in which final judgment may be rendered in the circuit court, may be carried by writ of error to the Supreme Court, whatever may be the amount of said judgment.

SEC. 4. *And be it further enacted,* That no suit or prosecution, civil or criminal, shall be maintained for any arrest or imprisonment made, or other trespasses or wrongs done or committed, or act omitted to be done, at any time during the present rebellion, by virtue or under color of any authority derived from or exercised by or under the President of the United States, or by or under any act of Congress, unless the same shall have been commenced within two years next after such arrest, imprisonment, trespass, or wrong may have been done or committed: *Provided,* That in no case shall the limitation herein provided commence to run until the passage of this act, so that no party shall, by virtue of

this act, be debarred of his remedy by suit or prosecution until two years from and after the passage of this act.

SEC. 5. *And be it further enacted*, That any person not in the military or naval service, and not subject to the rules and articles of war, who shall be arrested in any State or district wherein the ordinary process of the courts of the United States is not obstructed, for aiding the present rebellion, or for obstructing the execution of any law or military order, shall be discharged from such arrest, unless, within thirty days after such arrest, the charges against such person shall be reduced to writing and filed in the office of the clerk of the district court of the United States in the district in which such person is arrested. And it shall be the duty of the judge of said court, upon the application of such person, to examine into the cause of such arrest; and, upon hearing of such application, such judge may discharge such person, hold him to bail, or dismiss his application, as, in the opinion of such judge, the public safety may require.¹

SENATE SUBSTITUTE FOR BILL NO. 362, PASSED BY THE SENATE,
FEBRUARY 23, 1863.

An Act to provide for suspending the privilege of the writ of Habeas Corpus, for the discharge of State prisoners and others, and to authorize taking bail in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, during the present rebellion, the President of the United States, whenever in his judgment the public safety may require it, is authorized to suspend the privilege of the writ of *habeas corpus* in any case, or throughout the United States or any part thereof. And whenever and wherever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled, in answer to any writ of *habeas corpus*, to return the body of any person or persons detained by him by authority of the President; but upon the certificate, under oath, of the officer having charge of any one so detained, that

¹ *Globe*, 3d S. 37th Cong. pp. 554, 1056-1057.

such person is detained by him as a prisoner under authority of the President, further proceedings under the writ of *habeas corpus* shall be suspended by the judge or court having issued the said writ so long as said suspension by the President shall remain in force and said rebellion continue.

SEC. 2. *And be it further enacted*, That the Secretary of State and the Secretary of War be, and they are hereby, directed, as soon as may be practicable, to furnish to the judges of the circuit and district courts of the United States and of the District of Columbia a list of the names of all persons, citizens of States in which the administration of the laws has continued unimpaired in the said Federal courts, who are now, or may hereafter be, held as prisoners of the United States, by order or authority of the President of the United States or either of said Secretaries, in any fort, arsenal, or other place, as State or political prisoners, or otherwise than as prisoners of war; the said list to contain the names of all such who reside in the respective jurisdictions of said judges, or who may be deemed by the said Secretaries, or either of them, to have violated any law of the United States in any of said jurisdictions, and also the date of each arrest—the Secretary of State to furnish a list of such persons as are imprisoned by the order or authority of the President, acting through the State Department, and the Secretary of War a list of such as are imprisoned by the order or authority of the President, acting through the Department of War. And in all cases where a grand jury, having attended any of said courts having jurisdiction in the premises, after the passage of this act, and after the furnishing of said list, as aforesaid, has terminated its session without finding an indictment, or presentment, or other proceeding against any such person, it shall be the duty of the judge of said court forthwith to make an order that any such prisoner desiring a discharge from said imprisonment be brought before him to be discharged; and every officer of the United States having custody of such prisoner is hereby directed immediately to obey and execute said judge's order; and in case he shall delay or refuse so to do, he shall be subject to indictment for a misdemeanor, and be punished by a fine of not less than \$500, and imprisonment in the common

jail for a period not less than six months, in the discretion of the court: *Provided, however,* That no person shall be discharged by virtue of the provisions of this act until after he or she shall have taken an oath of allegiance to the Government of the United States, and to support the Constitution thereof; and that he [or she] will not hereafter in any way encourage or give aid and comfort to the present rebellion or supporters thereof: *And provided, also,* That the judge or court before whom such person may be brought, before discharging him or her from imprisonment, shall have power, on examination of the case, and, if the public safety shall require it, shall be required, to cause him or her to enter into recognizance, with or without surety, in a sum to be fixed by said judge or court, to keep the peace and be of good behavior towards the United States and its citizens, and from time to time, and at such times as such judge or court may direct, appear before said judge or court to be further dealt with, according to law, as the circumstances may require. And it shall be the duty of the district attorney of the United States to attend said examination before the judge.

SEC. 3. *And be it further enacted,* That in case any of such prisoners shall be under indictment or presentment for any offense against the laws of the United States, and by existing laws bail or a recognizance may be taken for the appearance for trial of such person, it shall be the duty of said judge at once to discharge such person upon bail or recognizance for trial as aforesaid. And in case the said Secretaries of State and War shall for any reason refuse or omit to furnish the said list of persons held as prisoners as aforesaid at the time of the passage of this act within twenty days hereafter, and of such persons as thereafter may be arrested within twenty days from the time of the arrest, any citizen may, after a grand jury shall have terminated its session without having found an indictment or presentment, as provided in the second section, by a petition alleging the facts aforesaid touching any of the persons so as aforesaid imprisoned, supported by the oath of such petitioner or any other credible person, obtain and be entitled to have the said judge's order to discharge

such prisoner on the same terms and conditions prescribed in the second section of this act: *Provided, however,* That the said judge shall be satisfied such allegations are true: *Provided,* That this act shall continue and be in force until the 1st of March, 1864, and no longer.¹

¹*Globe*, 3d S. 37th Cong. pp. 1205-1208.

APPENDIX II.

THE HABEAS CORPUS ACT OF MARCH 3, 1863.

An Act relating to Habeas Corpus, and regulating Judicial Proceedings in Certain Cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, during the present rebellion, the President of the United States, whenever, in his judgment, the public safety may require it, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States, or any part thereof. And whenever and wherever the said privilege shall be suspended, as aforesaid, no military or other officer shall be compelled, in answer to any writ of habeas corpus, to return the body of any person or persons detained by him by authority of the President; but upon the certificate, under oath, of the officer having charge of any one so detained that such person is detained by him as a prisoner under authority of the President, further proceedings under the writ of habeas corpus shall be suspended by the judge or court having issued the said writ, so long as said suspension by the President shall remain in force, and said rebellion continue.

SEC. 2. *And be it further enacted, That the Secretary of State and the Secretary of War be, and they are hereby, directed, as soon as may be practicable, to furnish to the judges of the circuit and district courts of the United States and of the District of Columbia a list of the names of all persons, citizens of states in which the administration of the laws has continued unimpaired in the said Federal courts, who are now, or may hereafter be, held as prisoners of the United States, by order or authority of the President of the United*

States or either of said Secretaries, in any fort, arsenal, or other place, as state or political prisoners, or otherwise than as prisoners of war; the said list to contain the names of all those who reside in the respective jurisdictions of said judges, or who may be deemed by the said Secretaries, or either of them, to have violated any law of the United States in any of said jurisdictions, and also the date of each arrest; the Secretary of State to furnish a list of such persons as are imprisoned by the order or authority of the President, acting through the State Department, and the Secretary of War a list of such as are imprisoned by the order or authority of the President, acting through the Department of War. And in all cases where a grand jury, having attended any of said courts having jurisdiction in the premises, after the passage of this act, and after the furnishing of said list, as aforesaid, has terminated its session without finding an indictment or presentment, or other proceeding against any such person, it shall be the duty of the judge of said court forthwith to make an order that any such prisoner desiring a discharge from said imprisonment be brought before him to be discharged; and every officer of the United States having custody of such prisoner is hereby directed immediately to obey and execute said judge's order; and in case he shall delay or refuse so to do, he shall be subject to indictment for a misdemeanor, and be punished by a fine of not less than five hundred dollars and imprisonment in the common jail for a period not less than six months, in the discretion of the court: *Provided, however,* That no person shall be discharged by virtue of the provisions of this act until after he or she shall have taken an oath of allegiance to the Government of the United States, and to support the Constitution thereof; and that he or she will not hereafter in any way encourage or give aid and comfort to the present rebellion, or the supporters thereof: *And provided, also,* That the judge or court before whom such person may be brought, before discharging him or her from imprisonment, shall have power, on examination of the case, and, if the public safety shall require it, shall be required to cause him or her to enter into recognizance, with or without surety, in a sum to be fixed by said judge or court, to keep the peace and

be of good behavior towards the United States and its citizens, and from time to time, and at such times as such judge or court may direct, appear before said judge or court to be further dealt with, according to law, as the circumstances may require. And it shall be the duty of the district attorney of the United States to attend such examination before the judge.

SEC. 3. *And be it further enacted*, That in case any of such prisoners shall be under indictment or presentment for any offence against the laws of the United States, and by existing laws bail or a recognizance may be taken for the appearance for trial of such person, it shall be the duty of said judge at once to discharge such person upon bail or recognizance for trial as aforesaid. And in case the said Secretaries of State and War shall for any reason refuse or omit to furnish the said list of persons held as prisoners as aforesaid at the time of the passage of this act within twenty days thereafter, and of such persons as hereafter may be arrested within twenty days from the time of the arrest, any citizen may, after a grand jury shall have terminated its session without finding an indictment or presentment, as provided in the second section of this act, by a petition alleging the facts aforesaid touching any of the persons so as aforesaid imprisoned, supported by the oath of such petitioner or any other credible person, obtain and be entitled to have the said judge's order to discharge such prisoner on the same terms and conditions prescribed in the second section of this act: *Provided, however*, That the judge shall be satisfied such allegations are true.

SEC. 4. *And be it further enacted*, That any order of the President, or under his authority, made at any time during the existence of the present rebellion, shall be a defence in all courts to any action or prosecution, civil or criminal, pending, or to be commenced, for any search, seizure, arrest, or imprisonment, made, done, or committed, or acts omitted to be done, under and by virtue of such order, or under color of any law of Congress, and such defence may be made by special plea, or under the general issue.

SEC. 5. *And be it further enacted*, That if any suit or prosecution, civil or criminal, has been or shall be commenced in

any state court against any officer, civil or military, or against any other person, for any arrest or imprisonment made, or other trespasses or wrongs done or committed, or any act omitted to be done, at any time during the present rebellion, by virtue or under color of any authority derived from or exercised by or under the President of the United States, or any act of Congress, and the defendant shall, at the time of entering his appearance in such court, or if such appearance shall have been entered before the passage of this act, then at the next session of the court in which such suit or prosecution is pending, file a petition, stating the facts and verified by affidavit, for the removal of the cause for trial at the next circuit court of the United States, to be holden in the district where the suit is pending, and offer good and sufficient surety for his filing in such court, on the first day of its session, copies of such process and other proceedings against him, and also for his appearing in such court and entering special bail in the cause, if special bail was originally required therein. It shall then be the duty of the state court to accept the surety and proceed no further in the cause or prosecution, and the bail that shall have been originally taken shall be discharged. And such copies being filed as aforesaid in such court of the United States, the cause shall proceed therein in the same manner as if it had been brought in said court by original process, whatever may be the amount in dispute or the damages claimed, or whatever the citizenship of the parties, any former law to the contrary notwithstanding. And any attachment of the goods or estate of the defendant by the original process shall hold the goods or estate so attached to answer the final judgment in the same manner as by the laws of such state they would have been holden to answer final judgment had it been rendered in the court in which the suit or prosecution was commenced. And it shall be lawful in any such action or prosecution which may be now pending, or hereafter commenced, before any state court whatever, for any cause aforesaid, after final judgment, for either party to remove and transfer, by appeal, such case during the session or term of said court at which the same shall have taken place, from such court to the next circuit

court of the United States to be held in the district in which such appeal shall be taken, in manner aforesaid. And it shall be the duty of the person taking such appeal to produce and file in the said circuit court attested copies of the process, proceedings, and judgment in such cause; and it shall also be competent for either party, within six months after the rendition of a judgment in any such cause, by writ of error or other process, to remove the same to the circuit court of the United States of that district in which such judgment shall have been rendered; and the said circuit court shall thereupon proceed to try and determine the facts and the law in such action, in the same manner as if the same had been there originally commenced, the judgment in such case notwithstanding. And any bail which may have been taken, or property attached, shall be holden on the final judgment of the said circuit court in such action, in the same manner as if no such removal and transfer had been made, as aforesaid. And the state court, from which any such action, civil or criminal, may be removed and transferred as aforesaid, upon the parties giving good and sufficient security for the prosecution thereof, shall allow the same to be removed and transferred, and proceed no further in the case: *Provided, however,* That if the party aforesaid shall fail duly to enter the removal and transfer, as aforesaid, in the circuit court of the United States, agreeably to this act, the state court, by which judgment shall have been rendered, and from which the transfer and removal shall have been made, as aforesaid, shall be authorized, on motion for that purpose, to issue execution, and to carry into effect any such judgment, the same as if no such removal and transfer had been made. *And provided also,* That no such appeal or writ of error shall be allowed in any criminal action or prosecution where final judgment shall have been rendered in favor of the defendant or respondent by the state court. And if in any suit hereafter commenced the plaintiff is nonsuited or judgment pass against him, the defendant shall recover double costs.

SEC. 6. *And be it further enacted,* That any suit or prosecution described in this act, in which final judgment may be rendered in the circuit court, may be carried by writ of error

to the Supreme Court, whatever may be the amount of said judgment.

SEC. 7. *And be it further enacted*, That no suit or prosecution, civil or criminal, shall be maintained for any arrest or imprisonment made, or other trespasses or wrongs done or committed, or act omitted to be done, at any time during the present rebellion, by virtue or under color of any authority derived from or exercised by or under the President of the United States, or by or under any act of Congress, unless the same shall have been commenced within two years next after such arrest, imprisonment, trespass, or wrong may have been done or committed or act may have been omitted to be done: *Provided*, That in no case shall the limitation herein provided commence to run until the passage of this act, so that no party shall, by virtue of this act, be debarred of his remedy by suit or prosecution until two years from and after the passage of this act.¹

¹ *Public Laws of the United States of America*, 3d S. 37th Cong. pp. 755-758.

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